

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Inquiries concerning administrative rules or other contents of the BULLETIN may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773.

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TABLE OF CONTENTS

1. EDITOR'S NOTES

Notice of Publication Error in the January 1, 1998, issue of the <i>Utah State Bulletin</i>	1
Notice of Publication Error in the January 15, 1998, issue of the <i>Utah State Bulletin</i>	1
Legislation Which May Affect the Rulemaking Process	1
S.B. 85 Administrative Rules Reauthorization (Stephenson)	3
S.B. 86 Administrative Rules Amendments (Stephenson)	4
S.B. 88 Administrative Rules Cost Impacts (Poulton)	13

2. SPECIAL NOTICE

Department of Administrative Services, Archives and Records Service: Public Notice	21
--	----

3. NOTICES OF PROPOSED RULES

Commerce

Occupational and Professional Licensing

No. 20650 (Amendment): R156-55a. Utah Construction Trades Licensing Act Rules	23
No. 20651 (Amendment): R156-59. Employee Leasing Company Act Rules	28

Securities

No. 20679 (Amendment): R164-4. Licensing Requirements	31
No. 20680 (Amendment): R164-5. Broker-Dealer and Investment Adviser Books and Records	38
No. 20681 (Amendment): R164-6-1g. Dishonest or Unethical Business Practices	40
No. 20682 (Amendment): R164-26-6. Consent to Service	44

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 20652 (Amendment): R414-10A. Transplant Services Standards	44
No. 20654 (Amendment): R414-22. Administrative Sanction Procedures and Regulations	56
No. 20655 (Repeal): R414-30. Bureau of Facility Management Policy and Procedures Manual Part B, Hospital Preadmission and Continued Stay Review	60
No. 20656 (Repeal): R414-36. Bureau of Facility Management Policy and Procedures Manual	66

Human Services

Administration, Administrative Services, Licensing

No. 20630 (Amendment): R501-1. General Provisions	70
---	----

Natural Resources

Energy and Resource Planning
 No. 20678 (New): R637-1. Utah Energy Saving Systems Tax Credit (ESSTC) Rules 73

Public Safety

Driver License
 No. 20632 (Amendment): R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs 76

Law Enforcement and Technical Services, Criminal Identification
 No. 20629 (Repeal): R722-1. Non-Criminal Justice Agency Access to State Criminal History Files77

Public Service Commission

Administration
 No. 20627 (New): R746-331. Determination of Exemption of Mutual Water Corporations78

No. 20677 (Amendment): R746-341. Lifeline Rule 78

Tax Commission

Property Tax
 No. 20649 (Amendment): R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201 81

Workforce Services

Employment Development
 No. 20675 (Amendment): R986-305. Resources 84

4. NOTICES OF 120-DAY (EMERGENCY) RULES

Health

Health Systems Improvement, Child Care Licensing
 No. 20645: R430-10. Notice of Intent to License, Hourly Care Provider 86

Public Service Commission

Administration
 No. 20626: R746-331. Determination of Exemption of Mutual Water Corporations 87

5. FIVE-YEAR REVIEW NOTICES OF CONTINUATION

Administrative Services

Administration
 No. 20631: R13-3. American with Disabilities Act Grievance Procedures 89

Education

Administration
 No. 20657: R277-516. Library Media Certificates and Programs 89

No. 20658: R277-518. Vocational-Technical Certificates 90

TABLE OF CONTENTS

No. 20659: R277-600. Student Transportation Standards and Policies 90

No. 20660: R277-605. Extracurricular Student Activities 91

No. 20661: R277-606. Interschool Competitive Sports in High School 91

No. 20662: R277-610. Released-Time Classes for Religious Instruction 91

No. 20663: R277-615. Foreign Exchange Students 92

No. 20664: R277-700. The Elementary and Secondary School Core Curriculum and High School Graduation Requirements 92

No. 20665: R277-701. Values Education 93

No. 20666: R277-702. Procedures for the Utah General Educational Developmental Certificate 93

No. 20667: R277-709. Education Programs Serving Youth in Custody 94

No. 20668: R277-710. Accelerated Learning Programs 94

No. 20669: R277-716. Alternative Language Services (ALS) 94

No. 20670: R277-718. Utah Career Teaching Scholarship Program 95

No. 20671: R277-721. Deadline for CACFP Sponsor Participation in Food Distribution Program 95

No. 20672: R277-722. Withholding Payments and Commodities in the CACFP 96

No. 20673: R277-730. Alternative High School Curriculum 96

No. 20674: R277-732. Community Education 97

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 20648: R414-4X. Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment 97

No. 20653: R414-22. Administrative Sanction Procedures and Regulations 97

Human Services

Aging and Adult Services

No. 20634: R510-100. Funding Formulas 98

No. 20635: R510-101. Carryover Policy for Title III: Grants for State and Community Programs on Aging 99

No. 20636: R510-102. Amendments to Area Plan and Management Plan 99

No. 20637: R510-103. Use of Senior Centers by Long Term Care Facility Residents and Senior Citizens' Groups Participating in Activities Outside Their Planning and Service Area 100

No. 20638: R510-106. Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance 100

No. 20639: R510-107. Title V Senior Community Service Employment Program Standards and Procedures 101

No. 20640: R510-108. Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act 101

No. 20641: R510-109. Definition of Significant Population of Older Native Americans 102

No. 20642: R510-110. Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services 102

No. 20643: R510-200. Long-Term Care Ombudsman Program Policy 103

No. 20644: R510-400. Home and Community-Based Alternatives Services Policy and Procedures 103

Recovery Services

No. 20647: R527-3. Definitions 104

Transportation

Motor Carrier, Ports of Entry

No. 20646: R912-4. Limitation of Special Permit Vehicles in Provo Canyon. Legal and Permitted Vehicles 104

6. NOTICES OF RULE EFFECTIVE DATES 105

7. RULES INDEX 107

EDITOR'S NOTES

NOTICE OF A PUBLICATION ERROR IN THE JANUARY 1, 1998, ISSUE OF THE *UTAH STATE BULLETIN*

In the January 1, 1998, issue of the *Utah State Bulletin* (98-1, page 199), an effective date notice was published for a change in proposed rule for Rule R643-870 (DAR No. 19729, published in the November 15, 1997, *Bulletin*). The effective date given was December 12, 1997. The change in proposed rule cannot be made effective as of this date because the date falls within the mandatory waiting period. The Division of Oil, Gas and Mining has made the change in proposed rule effective as of December 16, 1997, and the notice is published in the NOTICES OF RULE EFFECTIVE DATES in this *Bulletin*.

If you have any questions regarding this correction, please contact Ken Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3777, FAX: (801) 538-1773, or Internet E-mail: asitmain.khansen@email.state.ut.us.

NOTICE OF A PUBLICATION ERROR IN THE JANUARY 15, 1998, ISSUE OF THE *UTAH STATE BULLETIN*

In the January 15, 1998, issue of the *Utah State Bulletin* (98-2, page 119), the DAR numbers on the four effective notices for the new rules from Community Development, Energy Services were listed incorrectly. R203-1 was listed as 19970, it is 19770; R203-3 was listed as 19975, it is 19775; R203-4 was listed as 19971, it is 19771; and R203-5 was listed as 19972, it is 19772. The effective date for the rules, December 30, 1997, is correct.

If you have any questions regarding this correction, please contact Ken Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3777, FAX: (801) 538-1773, or Internet E-mail: asitmain.khansen@email.state.ut.us.

LEGISLATION WHICH MAY AFFECT THE RULEMAKING PROCESS

As of January 27, 1998, three bills dealing with administrative rulemaking are receiving consideration in the 1998 General Legislative Session. A brief summary of each follows.

S.B. 85 Administrative Rules Reauthorization (Stephenson)

This is the Administrative Rules Review Committee's annual bill which is required by Section 63-46a-11.5. The long title describes S.B. 85 as "[a]n act . . . reauthorizing rules of state agencies . . ." This bill does not reauthorize two rules: R501-15 and R714-205. This bill does reauthorize all other administrative rules.

S.B. 86 Administrative Rules Amendments (Stephenson)

This bill makes several changes to the Utah Administrative Rulemaking Act (Title 63, Chapter 46a). Specifically, it: (1) allows agencies to incorporate by reference "state agency implementation plans mandated by the federal government for participation in the federal program"; (2) changes the five-year review requirement so that agencies provide, as part of their review, a summary of written comment received "during and since the last five-year review" rather than "after enactment"; (3) clarifies publication requirements for five-year review extensions; (4) clarifies that a five-year review or five-year review extension may be filed "on or before" the rule's anniversary date, rather than "before"; (5) provides that the Administrative Rules Review Committee "shall convene at least once each month," but that the committee chairs may suspend meetings during the general

session; (6) permits the Administrative Rules Review Committee to "not reauthorize" a specific section, or an entire rule (the current language allows the Committee to act only at the rule level); and (7) changes the statute of limitations for nonsubstantive changes made by the Division from four years to two years--consistent with the statute of limitations for other rule changes.

S.B. 88 Administrative Rules Cost Impacts (Poulton)

This is a revived version of 1st Sub. S.B. 136 (1996). As amended, it requires: (1) agencies to "develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules," and (2) department heads to "consider and comment on the fiscal impact a rule may have on businesses" before the rule is filed with the Division of Administrative Rules. This bill has the support of the administration and the Salt Lake Area Chamber of Commerce Small Business Legislative Task Force.

General Information

The text of each bill is reproduced as follows. Up-to-date information about legislation related to rulemaking is available on the Internet at <http://www.rules.state.ut.us/law/legis.htm>. Information about legislation may be found on the Legislature's 1998 General Session page at <http://www.le.state.ut.us/~1998/1998.htm>.

Questions about these bills may be directed to Ken Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3777, FAX: (801) 538-1773, or Internet E-mail: asitmain.khansen@email.state.ut.us.

Bill Text Begins Next Page

- 1 (a) authorizes, requires, or prohibits an action;
2 (b) provides or prohibits a material benefit;
3 (c) applies to a class of persons or another agency; and
4 (d) is explicitly or implicitly authorized by statute.
- 5 (3) Rulemaking is also required when an agency issues a written interpretation of a state
6 or federal legal mandate.
- 7 (4) Rulemaking is not required when:
- 8 (a) agency action applies only to internal agency management, inmates or residents of a
9 state correctional, diagnostic, or detention facility, persons under state legal custody, patients
10 admitted to a state hospital, members of the state retirement system, or students enrolled in a state
11 education institution;
- 12 (b) a standardized agency manual applies only to internal fiscal or administrative details
13 of governmental entities supervised under statute;
- 14 (c) an agency issues policy or other statements that are advisory, informative, or
15 descriptive, and do not conform to the requirements of Subsections (2) and (3); or
16 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all
17 nonsubstantive changes in a rule with the division.
- 18 (5) A rule shall enumerate any penalty authorized by statute that may result from its
19 violation.
- 20 (6) Each agency shall enact rules incorporating the principles of law not already in its rules
21 that are established by final adjudicative decisions within 120 days after the decision is announced
22 in its cases.
- 23 (7) (a) Each agency may enact a rule that incorporates by reference:
- 24 (i) all or any part of another code, rule, or regulation that has been adopted by a federal
25 agency, an agency or political subdivision of this state, an agency of another state, or by a
26 nationally-recognized organization or association;
- 27 (ii) state agency implementation plans mandated by the federal government for
28 participation in the federal program;
- 29 ~~[(iii)]~~ (iii) lists, tables, illustrations, or similar materials that are subject to frequent change,
30 fully described in the rule, and are available for public inspection; or
31 ~~[(iii)]~~ (iv) lists, tables, illustrations, or similar materials that the director determines are too

- 1 expensive to reproduce in the administrative code.
- 2 (b) Rules incorporating materials by reference shall:
- 3 (i) be enacted according to the procedures outlined in this chapter;
- 4 (ii) state that the referenced material is incorporated by reference;
- 5 (iii) state the date, issue, or version of the material being incorporated; and
- 6 (iv) define specifically what material is incorporated by reference and identify any agency
- 7 deviations from it.
- 8 (c) The agency shall identify any substantive changes in the material incorporated by
- 9 reference by following the rulemaking procedures of this chapter.
- 10 (d) The agency shall maintain a complete and current copy of the referenced material
- 11 available for public inspection at the agency and at the division.
- 12 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the
- 13 limits prescribed by statute or agency rule.
- 14 (b) An agency may enact a rule creating a justified exception to a rule.
- 15 (9) An agency may obtain assistance from the attorney general to ensure that its rules meet
- 16 legal and constitutional requirements.
- 17 Section 2. Section **63-46a-9** is amended to read:
- 18 **63-46a-9. Agency review of rules -- Schedule of filings -- Limited exemption for**
- 19 **certain rules.**
- 20 (1) Each agency shall review each of its rules within five years of the rule's original
- 21 effective date or within five years of the filing of the last five-year review, whichever is later.
- 22 Rules effective prior to 1992 need not be reviewed until 1997.
- 23 (2) An agency may consider any substantial review of a rule to be a five-year review. If
- 24 the agency chooses to consider a review a five-year review, it shall follow the procedures outlined
- 25 in Subsection (3).
- 26 (3) At the conclusion of its review, the agency shall file a notice of review on or before
- 27 the anniversary date indicating its intent to continue, amend, or repeal the rule.
- 28 (a) If the agency continues the rule, it shall file a statement which includes:
- 29 (i) a concise explanation of the particular statutory provisions under which the rule is
- 30 enacted and how these provisions authorize or require the rule;
- 31 (ii) a summary of written comments received ~~[after enactment]~~ during and since the last

- 1 five-year review of the rule from interested persons supporting or opposing the rule; and
2 (iii) a reasoned justification for continuation of the rule, including reasons why the agency
3 disagrees with comments in opposition to the rule, if any.
- 4 (b) If the agency repeals the rule, it shall comply with Section 63-46a-4.
- 5 (c) If the agency amends and continues the rule, it shall comply with the requirements of
6 Section 63-46a-4 and file the statement required in Subsection (3)(a).
- 7 (4) (a) The division shall publish the notice and statement in the bulletin.
- 8 (b) The division may schedule the publication of agency notices and statements, provided
9 that no notice and statement shall be published more than one year after the review deadline
10 established under Subsection (1).
- 11 (5) The division shall notify an agency of rules due for review at least 180 days prior to
12 the anniversary date.
- 13 (6) If an agency finds that it will not meet the deadline established in Subsection (1):
- 14 (a) the agency may file an extension prior to the anniversary date with the division
15 indicating the reason for the extension; and
- 16 (b) the division shall publish notice of the extension in the next issue of the bulletin.
- 17 (7) An extension permits the agency to file a notice no more than 120 days after the
18 anniversary date.
- 19 (8) If an agency fails to file a notice of review or extension on or before the date specified
20 in the notice mandated in Subsection [~~(4)~~ (5)], the division shall:
- 21 (a) publish a notice in the next issue of the bulletin that the rule has expired and is no
22 longer enforceable;
- 23 (b) remove the rule from the code; and
- 24 (c) notify the agency that the rule has expired.
- 25 (9) After a rule expires, an agency must comply with the requirements of Section 63-46a-4
26 to reenact the rule.
- 27 (10) (a) Rules issued under the following provisions related to the Department of
28 Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to the
29 requirements of this section until July 1, 1998:
- 30 (i) Title 34, Labor in General;
- 31 (ii) Title 34A, Utah Labor Code;

-
- 1 (iii) Title 35, Labor - Industrial Commission;
- 2 (iv) Title 35A, Utah Workforce Services Code;
- 3 (v) Title 40, Chapter 2, Coal Mines; and
- 4 (vi) Title 57, Chapter 21, Utah Fair Housing Act.
- 5 (b) Any rule described in Subsection (10)(a) that would have expired on or after July 1,
- 6 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of
- 7 Workforce Services or Labor Commission files:
- 8 (i) the notice of review, described in Subsection (3); or
- 9 (ii) an extension described in Subsection (6).
- 10 Section 3. Section **63-46a-11** is amended to read:
- 11 **63-46a-11. Administrative Rules Review Committee.**
- 12 (1) (a) There is created an Administrative Rules Review Committee of ten permanent
- 13 members and four ex officio members.
- 14 (b) (i) The committee's permanent members shall be composed of five members of the
- 15 Senate, appointed by the president of the Senate, and five members of the House, appointed by the
- 16 speaker of the House, with no more than three senators and three representatives from the same
- 17 political party.
- 18 (ii) The permanent members shall convene at least once each month as a committee to
- 19 review new agency rules, amendments to existing agency rules, and repeals of existing agency
- 20 rules. Meetings may be suspended during the annual general session at the discretion of the
- 21 committee chairs.
- 22 (iii) Members shall serve for two-year terms or until their successors are appointed.
- 23 (iv) A vacancy exists whenever a committee member ceases to be a member of the
- 24 Legislature, or when a member resigns from the committee. Vacancies shall be filled by the
- 25 appointing authority, and the replacement shall serve out the unexpired term.
- 26 (c) When the committee reviews existing rules, the committee's permanent members shall
- 27 invite the Senate and House chairmen of the standing committee and the Senate and House
- 28 chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing
- 29 rules are being reviewed to participate as nonvoting, ex officio members with the committee.
- 30 (d) Three representatives and three senators from the permanent members are a quorum for
- 31 the transaction of business at any meeting.

- 1 (2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee
2 at the same time public notice is given under Section 63-46a-4.
- 3 (3) (a) The committee shall exercise continuous oversight of the process of rulemaking.
4 (b) The committee shall examine rules submitted by each agency to determine:
5 (i) whether or not they are authorized by statute;
6 (ii) whether or not they comply with legislative intent;
7 (iii) their impact on the economy and the government operations of the state and local
8 political subdivisions; and
9 (iv) their impact on affected persons.
- 10 (c) To carry out these duties, the committee may examine any other issues that it considers
11 necessary. The committee may also notify and refer rules to the chairmen of the interim
12 committee which has jurisdiction over a particular agency when the committee determines that an
13 issue involved in an agency's rules may be more appropriately addressed by that committee.
- 14 (d) In reviewing the rules, the committee shall follow generally accepted principles of
15 statutory construction.
- 16 (4) The committee may request that the Office of the Legislative Fiscal Analyst prepare
17 a fiscal note on any rule.
- 18 (5) In order to accomplish its oversight functions, the committee has all the powers granted
19 to legislative interim committees as set forth in Section 36-12-11.
- 20 (6) (a) The committee may prepare written findings of its review of each rule and may
21 include any recommendations, including legislative action.
22 (b) The committee shall provide to the agency that enacted the rule:
23 (i) a copy of its findings, if any; and
24 (ii) a request that the agency notify the committee of any changes it makes in the rule.
25 (c) The committee shall provide a copy of its findings to any member of the Legislature
26 and to any person affected by the rule who requests a copy.
27 (d) The committee shall provide a copy of its findings to the presiding officers of both the
28 House and the Senate, Senate and House chairmen of the standing committee, and the Senate and
29 House chairmen of the Appropriation Subcommittee that have jurisdiction over the agency whose
30 rules are the subject of the findings.
- 31 (7) (a) The committee may submit a report on its review of state agency rules to each

1 member of the Legislature at each regular session.

2 (b) The report shall include:

3 (i) the findings and recommendations made by the committee under Subsection (6);

4 (ii) any action taken by an agency in response to committee recommendations; and

5 (iii) any recommendations by the committee for legislation.

6 Section 4. Section **63-46a-11.5** is amended to read:

7 **63-46a-11.5. Legislative reauthorization of agency rules -- Extension of rules by**
 8 **governor.**

9 (1) All grants of rulemaking power from the Legislature to a state agency in any statute
 10 are made subject to the provisions of this section.

11 (2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on

12 January 1 of any calendar year expires on May 1 of that year unless it has been reauthorized by the
 13 Legislature.

14 (b) Notwithstanding the provisions of Subsection (1)(a), an agency's rules do not expire
 15 if:

16 (i) the rule is explicitly mandated by a federal law or regulation; or

17 (ii) a provision of Utah's constitution vests the agency with specific constitutional
 18 authority to regulate.

19 (3) (a) Prior to January 1 of each year, the Administrative Rules Review Committee shall
 20 have omnibus legislation prepared for consideration by the Legislature during its annual general
 21 session.

22 (b) The omnibus legislation shall be substantially in the following form: "All rules of Utah
 23 state agencies are reauthorized except for the following:".

24 (c) Before sending the legislation to the governor for his action, the Administrative Rules
 25 Review Committee may send a letter to the governor and to the agency explaining specifically why
 26 the committee believes any rule should not be reauthorized.

27 (d) For the purpose of this section, either the entire rule or a single section of a rule may
 28 be excepted for reauthorization in the omnibus legislation considered by the Legislature.

29 (4) The Legislature's reauthorization of a rule by legislation does not constitute legislative
 30 approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.

31 (5) (a) If an agency believes that a rule that has not been reauthorized by the Legislature

1 or that will be allowed to expire should continue in full force and effect and is a rule within their
2 authorized rulemaking power, the agency may seek the governor's declaration extending the rule
3 beyond the expiration date.

4 (b) In seeking the extension, the agency shall submit a petition to the governor that
5 affirmatively states:

6 (i) that the rule is necessary; and

7 (ii) a citation to the source of its authority to make the rule.

8 (c) (i) If the governor finds that the necessity does exist, and that the agency has the
9 authority to make the rule, he may declare the rule to be extended by publishing that declaration
10 in the Administrative Rules Bulletin on or before April 15 of that year.

11 (ii) The declaration shall set forth the rule to be extended, the reasons the extension is
12 necessary, and a citation to the source of the agency's authority to make the rule.

13 (d) If the omnibus bill required by Subsection (3) fails to pass both houses of the
14 Legislature or is found to have a technical legal defect preventing reauthorization of administrative
15 rules intended to be reauthorized by the Legislature, the governor may declare all rules to be
16 extended by publishing a single declaration in the Administrative Rules Bulletin on or before June
17 15 without meeting requirements of Subsections (5)(b) and (c).

18 Section 5. Section **63-46a-14** is amended to read:

19 **63-46a-14. Time for contesting a rule -- Statute of limitations.**

20 (1) A proceeding to contest any rule on the ground of noncompliance with the procedural
21 requirements of this chapter shall commence within two years of the effective date of the rule.

22 (2) A proceeding to contest any rule on the ground of not being supported by substantial
23 evidence when viewed in light of the whole administrative record shall commence within four
24 years of the effective date of the challenged action.

25 (3) A proceeding to contest any rule on the basis that a change to the rule made under
26 Subsection 63-46a-10(2) or (3) substantively changed the rule shall be commenced within [~~four~~
27 two] years of the date the change was made.

28 Section 6. **Effective date.**

29 This act takes effect on July 1, 1998.

Legislative Review Note

as of 1-12-98 4:07 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

- 9 -

End of S.B. 86

1 (B) the administration shall return the proposal to the party who submitted the proposal,
2 and incur no further duties under Title 63, Chapter 2, Government Records Access and
3 Management Act, if the administration determines not to proceed with the proposal;
4 (C) the administration shall classify the proposal pursuant to law if it decides to proceed
5 with the proposal; and
6 (D) Section 63-2-403 does not apply during the review period;
7 (ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah
8 Administrative Rulemaking Act, except that the director, with the board's approval, may establish
9 a procedure for the expedited approval of rules, based on written findings by the director showing:
10 (A) the changes in business opportunities affecting the assets of the trust;
11 (B) the specific business opportunity arising out of those changes which may be lost
12 without the rule or changes to the rule;
13 (C) the reasons the normal procedures under Section 63-46a-4 cannot be met without
14 causing the loss of the specific opportunity;
15 (D) approval by at least five board members; and
16 (E) that the director has filed a copy of the rule and a rule analysis, stating the specific
17 reasons and justifications for its findings, with the Division of Administrative Rules and notified
18 interested parties as provided in Subsection 63-46a-4~~(4)~~(6); and
19 (iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel
20 Management Act, except as follows:
21 (A) the board may approve, upon recommendation of the director, that exemption for
22 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
23 the administration to efficiently fulfill its responsibilities under the law. The director shall consult
24 with the director of the Department of Human Resource Management prior to making such a
25 recommendation. The positions of director, deputy director, assistant director, legal counsel
26 appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs officer are
27 exempt under Subsections 67-19-12(2) and 67-19-15(1);
28 (B) salary for exempted positions, except for the director, shall be set by the director, after
29 consultation with the director of the Department of Human Resource Management, within ranges
30 approved by the board. The board and director shall consider salaries for similar positions in
31 private enterprise and other public employment when setting salary ranges; and

1 (C) the board may create an annual incentive and bonus plan for the director and other
2 administration employees designated by the board, based upon the attainment of financial
3 performance goals and other measurable criteria defined and budgeted in advance by the board;
4 and
5 (iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code,
6 except where the board approves, upon recommendation of the director, exemption under Section
7 63-56-3 and simultaneous adoption of policies for procurement, which enable the administration
8 to efficiently fulfill its responsibilities under the law.
9 (b) (i) The board and director shall review the exceptions under Subsection (3)(a) and
10 make recommendations for any modification, if required, which the Legislature would be asked
11 to consider during its annual General Session.
12 (ii) The board and director may include in their recommendations any other proposed
13 exceptions from the usual executive and legislative controls the board and director consider
14 necessary to accomplish the purpose of this title.
15 (4) The administration is managed by a director of school and institutional trust lands
16 appointed by a majority vote of the board of trustees with the consent of the governor.
17 (5) (a) The board of trustees shall provide policies for the management of the
18 administration and for the management of trust lands and assets.
19 (b) The board shall provide policies for the ownership and control of Native American
20 remains that are discovered or excavated on school and institutional trust lands in consultation with
21 the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native
22 American Graves Protection and Repatriation Act.
23 (6) In connection with joint ventures for the development of trust lands and minerals
24 approved by the board under Subsection 53C-1-303(4)(c), the administration may become a
25 member of a limited liability company under Title 48, Chapter 2b, Utah Limited Liability
26 Company Act, and is considered a person under Subsection 48-2b-102(6) for such purposes.
27 Section 2. Section **63-46a-4** is amended to read:
28 **63-46a-4. Rulemaking procedure.**
29 (1) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or
30 repealing a rule agencies shall comply with:
31 (a) the requirements of this section;

-
- 1 (b) consistent procedures required by other statutes;
- 2 (c) applicable federal mandates; and
- 3 (d) rules made by the division to implement this chapter.
- 4 (2) Subject to the requirements of this chapter, each agency shall develop and use flexible
- 5 approaches in drafting rules that meet the needs of the agency and that involve persons affected
- 6 by the agency's rules.
- 7 ~~(2)~~ (3) (a) Each agency shall file its proposed rule and rule analysis with the division.
- 8 (b) (i) Rule amendments shall be marked with new language underlined and deleted
- 9 language struck out.
- 10 (ii) Alternatively, the repeal of an entire rule may be indicated by annotating the rule
- 11 "repealed in its entirety" prominently on every page.
- 12 (c) (i) The division shall publish the information required under Subsection (3) on the rule
- 13 analysis and the text of the proposed rule in the next issue of the bulletin.
- 14 (ii) For rule amendments, only the section or subsection of the rule being amended need
- 15 be printed.
- 16 (iii) If the director determines that the rule is too long to publish, the director shall publish
- 17 the rule analysis and shall publish the rule by reference to a copy on file with the division.
- 18 ~~(3)~~ (4) The rule analysis shall contain:
- 19 (a) a summary of the rule or change;
- 20 (b) the purpose of the rule or reason for the change;
- 21 (c) the statutory authority or federal requirement for the rule;
- 22 (d) the anticipated cost or savings to:
- 23 (i) the state budget;
- 24 (ii) local governments; and
- 25 (iii) other persons;
- 26 (e) the compliance cost for affected persons;
- 27 (f) how interested persons may inspect the full text of the rule;
- 28 (g) how interested persons may present their views on the rule;
- 29 (h) the time and place of any scheduled public hearing;
- 30 (i) the name and telephone number of an agency employee who may be contacted about
- 31 the rule;

- 1 (j) the name of the agency head or designee who authorized the rule; and
2 (k) the date on which the rule may become effective following the public comment period.
3 (5) Prior to filing a rule with the division, the department head S [or designee] s shall
3a consider S AND COMMENT ON s
4 the fiscal impact a rule may have on businesses.
5 ~~[(4)]~~ (6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
6 summary that generally includes the following:
7 (i) a summary of substantive provisions in the repealed rule which are eliminated from the
8 enacted rule; and
9 (ii) a summary of new substantive provisions appearing only in the enacted rule.
10 (b) The summary required under this subsection is to aid in review and may not be used
11 to contest any rule on the ground of noncompliance with the procedural requirements of this
12 chapter.
13 ~~[(5)]~~ (7) A copy of the rule analysis shall be mailed to all persons who have made timely
14 request of the agency for advance notice of its rulemaking proceedings and to any other person
15 who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.
16 ~~[(6)]~~ (8) Following the publication date, the agency shall allow at least 30 days for public
17 comment on the rule.
18 ~~[(7)]~~ (9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule
19 becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120
20 days after the publication date.
21 (b) The agency shall provide notice of the rule's effective date to the division in the form
22 required by the division.
23 (c) The notice of effective date may not provide for an effective date prior to the date it
24 is received by the division.
25 (d) The division shall publish notice of the effective date of the rule in the next issue of
26 the bulletin.
27 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not
28 filed with the division within 120 days of publication.
29 Section 3. Section **63-46a-7** is amended to read:
30 **63-46a-7. Exceptions to rulemaking procedure.**
31 (1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4 unless

Amend on 2—goldenrod January 26, 1998

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- 1 an agency finds that these procedures would:
- 2 (a) cause an imminent peril to the public health, safety, or welfare;
- 3 (b) cause an imminent budget reduction because of budget restraints or federal
- 4 requirements; or
- 5 (c) place the agency in violation of federal or state law.
- 6 (2) (a) When finding that its rule is excepted from regular rulemaking procedures by this
- 7 section, the agency shall file with the division:
- 8 (i) a copy of the rule; and
- 9 (ii) a rule analysis that includes the specific reasons and justifications for its findings.
- 10 (b) The division shall publish the rule in the bulletin as provided in Subsection
- 11 63-46a-4~~(2)~~(3).
- 12 (c) The agency shall notify interested persons as provided in Subsection 63-46a-4~~(5)~~(7).
- 13 (d) The rule becomes effective for a period not exceeding 120 days on the date of filing
- 14 or any later date designated in the rule.
- 15 (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also
- 16 comply with the procedures of Section 63-46a-4.
- 17 Section 4. Section 63-46a-10.5 is amended to read:
- 18 **63-46a-10.5. Repeal and reenactment of Utah Administrative Code.**
- 19 (1) When the director determines that the Utah Administrative Code requires extensive
- 20 revision and reorganization, the division may repeal the code and reenact a new code according
- 21 to the requirements of this section.
- 22 (2) The division may:
- 23 (a) reorganize, reformat, and renumber the code;
- 24 (b) require each agency to review its rules and make any organizational or substantive
- 25 changes according to the requirements of Section 63-46a-6; and
- 26 (c) require each agency to prepare a brief summary of all substantive changes made by the
- 27 agency.
- 28 (3) The division may make nonsubstantive changes in the code by:
- 29 (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- 30 (b) eliminating duplication;
- 31 (c) correcting defective or inconsistent section and paragraph structure in arrangement of

- 1 the subject matter of rules;
- 2 (d) eliminating all obsolete or redundant words;
- 3 (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering,
- 4 referencing, and wording;
- 5 (f) changing a catchline to more accurately reflect the substance of each section, part, rule,
- 6 or title;
- 7 (g) updating or correcting annotations associated with a section, part, rule, or title; and
- 8 (h) merging or determining priority of any amendment, enactment, or repeal to the same
- 9 rule or section made effective by an agency.
- 10 (4) (a) To inform the public about the proposed code reenactment, the division shall
- 11 publish in the bulletin:
 - 12 (i) notice of the code reenactment;
 - 13 (ii) the date, time, and place of a public hearing where members of the public may
 - 14 comment on the proposed reenactment of the code;
 - 15 (iii) locations where the proposed reenactment of the code may be inspected; and
 - 16 (iv) agency summaries of substantive changes in the reenacted code.
- 17 (b) To inform the public about substantive changes in agency rules contained in the
- 18 proposed reenactment, each agency shall:
 - 19 (i) make copies of their reenacted rules available for public inspection during regular
 - 20 business hours; and
 - 21 (ii) comply with the requirements of Subsection 63-46a-4~~(4)~~(6).
- 22 (5) The division shall hold a public hearing on the proposed code reenactment no fewer
- 23 than 30 days nor more than 45 days after the publication required by Subsection (3)(a).
- 24 (6) The division shall distribute complete copies of the proposed code reenactment without
- 25 charge to:
 - 26 (a) state-designated repositories in Utah;
 - 27 (b) the Administrative Rules Review Committee; and
 - 28 (c) the Office of Legislative Research and General Counsel.
- 29 (7) The former code is repealed and the reenacted code is effective at noon on a date
- 30 designated by the division that is not fewer than 45 days nor more than 90 days after the
- 31 publication date required by this section.

- 1 (8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for
- 2 a review of all agency rules.

Legislative Review Note

as of 10-28-97 11:01 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

- 8 -

End of S.B. 88

SPECIAL NOTICE

DEPARTMENT OF ADMINISTRATIVE SERVICES ARCHIVES AND RECORDS SERVICE

PUBLIC NOTICE
January 16, 1998

The Utah State Archives, Records Analysis Section hereby invites public comment in the records scheduling process. The State Records Committee (consisting of the State Auditor's designee, the Division of State History director, a records manager from the private sector, the Governor or his designee, a citizen member, an elected official representing political subdivisions, and an individual representing the news media) is statutorily mandated to "review and approve retention and disposal of records." Certain records from state and local government agencies are expected to be presented to the State Records Committee for retention and disposition approval. These retention schedules may be viewed on location in our Research Room or via our web page (<http://www.archives.state.ut.us/recmanag/retsched.htm>).

Comments from citizens are invited between February 9, 1998, and March 10, 1998. Contact the Utah State Archives at (801) 538-3012 for more information.

End of Special Notices

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 2, 1998, 5:01 p.m., and January 15, 1998, 5:00 p.m., are included in this, the February 1, 1998, 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 (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the filing agency or from the Division 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 March 3, 1998. The agency may accept comment beyond this date and will list 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 to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 1, 1998, the agency may notify the Division 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 31 days 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 Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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 UTAH CODE Section 63-46a-4 (1996); and UTAH ADMINISTRATIVE CODE Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

Proposed Rules Begin Next Page

Commerce, Occupational and Professional Licensing
R156-55a
Utah Construction Trades Licensing Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 20650
FILED: 01/13/98, 10:59
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: After Division and Board review, several changes are being proposed.

SUMMARY: Two new trade classifications requiring licensure have been added, laminate floor installation contractor and sports court and running track installation contractor. Definition of scope of work for these two new trade classifications were also added. An exception was added to the scope of work definition for S250-Insulation Contractor providing that their scope of work shall not include mechanical insulation of pipes, ducts or conduits. Additions were made with respect to minimum experience requirements for contractor classifications E100, B100 and R100. Addition provides that the two years of supervisory or managerial position experience shall be under the direct supervision of a licensed E100, B100 or R100 contractor, or have been a licensed contractor under a classification other than an E100, B100 or R100 for a minimum of four years. Also provided was that a four-year degree in Construction Management may have one year supervisory or managerial experience credited towards the experience requirement. Added that the Division may require the applicant to provide written documentation or verification of the experience.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 58-55-101, and Subsections 58-55-308(1), 58-55-301(1), 58-55-102(2), 58-1-106(1), and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: None.
LOCAL GOVERNMENTS: None.
OTHER PERSONS: Persons who are engaged in laminate floor installation and sports court and running track installation will now be required to apply for licensure as a contractor. Initial application fees are \$200 with a renewal fee of \$80 due every two years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons who are engaged in laminate floor installation and sports court and running track installation will now be required to apply for licensure as a contractor. Initial application fees are \$200 with a renewal fee of \$80 due every two years.

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Jud Weiler at the above address, by phone at (801) 530-6731, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.jweiler@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 02/25/98, 8:30 a.m., 160 East 300 South, Room 4A, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: J. Craig Jackson, Division Director

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rules.
R156-55a-301. License Classifications - Scope of Practice.

(1) Licenses shall be issued in the license classifications or subclassifications set forth in Subsection (2) of this section. A person licensed in any primary classification shall be qualified and permitted to perform the work defined under any license subclassification of that primary classification. A person licensed only in a subclassification shall be qualified and permitted to perform the work defined under that subclassification only. A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are clearly incidental to the performance of his licensed craft or trade.

(2) Licenses shall be issued in the following primary classifications and subclassifications:

TABLE
Table with 3 columns: Primary Classification Number, Subclassification Number, Title. Rows include E100 (General Engineering Contractor), B100 (General Building Contractor), R100 (Residential and Small Commercial Contractor), and R101 (Residential and Small Commercial Non-Structural Remodeling and Repair Contractor).

R200		Factory Built Housing Set-Up Contractor		S281	Single Ply and Specialty Coating Contractor
I101		General Engineering Trades Instructor		S282	Build-up Roofing Contractor
I102		General Building Trades Instructor		S283	Shingle and Shake Roofing Contractor
I103		Electrical Trades Instructor		S284	Tile Roofing Contractor
I104		Plumbing Trades Instructor		S285	Metal Roofing Contractor
I105		Mechanical Trades Instructor	S290		General Masonry Contractor
S200		General Electrical Contractor		S291	Stone Masonry Contractor
	S201	Residential Electrical Contractor		S292	Terrazzo Contractor
				S293	Marble, Tile and Ceramic Contractor
S210		General Plumbing Contractor		S294	Cultured Marble Contractor
	S211	Boiler Installation Contractor	S300		General Painting Contractor
	S212	Irrigation Sprinkling Contractor	S310		Excavation and Grading Contractor
	S213	Industrial Piping Contractor	S320		Steel Erection Contractor
	S214	Water Conditioning Equipment Contractor		S321	Steel Reinforcing Contractor
	S215	Solar Energy Systems Contractor		S322	Metal Building Erection Contractor
	S216	Residential Sewer Connection and Septic Tank Contractor	S330		Structural Stud Erection Contractor
	S217	Residential Plumbing Contractor	S340		Landscaping Contractor
			S350		Sheet Metal Contractor
S220		Carpentry Contractor		S351	HVAC Contractor
	S221	Cabinet and Millwork Installation Contractor			Refrigerated Air Conditioning Contractor
				S352	Evaporative Cooling Contractor
S230		Metal and Vinyl Siding Contractor		S353	Warm Air Heating Contractor
	S231	Raingutter Installation Contractor	S360		Refrigeration Contractor
S240		Glass and Glazing Contractor	S370		Fire Suppression Systems Contractor
S250		Insulation Contractor	S380		Swimming Pool and Spa Contractor
S260		General Concrete Contractor	S390		Sewer and Water Pipeline Contractor
	S261	Concrete Form Setting and Shoring Contractor	S400		Asphalt Paving Contractor
	S262	Gunnite and Pressure Grouting Contractor	S410		Pipeline and Conduit Contractor
	S263	Cementitious Coating Systems Resurfacing and Sealing Contractor	S420		General Fencing and Guardrail Contractor
				S421	Residential Fencing Contractor
S270		General Drywall, Stucco and Plastering Contractor	S430		Metal Firebox and Fuel Burning Stove Installer
	S271	Plastering and Stucco Contractor	S440		Sign Installation Contractor
	S272	Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor		S441	Non Electrical Outdoor Advertising Sign Contractor
	S273	Light-weight Metal and Non-bearing Wall Partitions Contractor	S450		Mechanical Insulation Contractor
			S460		Wrecking and Demolition Contractor
	S274	Drywall Contractor	S470		Petroleum System Contractor
S280		General Roofing Contractor	S480		Piers and Foundations Contractor

S490	Wood Flooring Contractor
S491	Laminate Floor Installation Contractor
S500	Sports Court Installation Contractor

(3) The license classifications and subclassifications are defined to designate the scope of work of a licensee in each classification as follows:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(13).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(12).

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(24).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$25,000 in total cost.

R200 - Factory Built Housing Set Up Contractor. Set up or installation of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities to the manufactured housing unit. Work excluded from this classification includes site preparation or finishing, construction of a permanent foundation and construction of utility services to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instructor. A General Engineering Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(13).

I102 - General Building Trades Instructor. A General Building Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(24).

I103 - Electrical Trades Instructor. An Electrical Trades Instructor is a construction trades instructor authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instructor. A Plumbing Trades Instructor is a construction trades instructor authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instructor. A Mechanical Trades Instructor is a construction trades instructor authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers,

conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Energy Systems Contractor. Fabrication and/or installation of solar energy systems.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic composites as is by custom and usage accepted in the building industry as carpentry.

S221 - Cabinet and Millwork Installation Contractor. On-site construction and/or installation of milled wood products.

S230 - Metal and Vinyl Siding Contractor. Fabrication, construction, and/or installation of wood, aluminum, steel or vinyl sidings.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature or sound control, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunitite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall, Stucco and Plastering Contractor. Fabrication, construction, and/or installation of drywall, gypsum, wallboard panels and assemblies. Preparation of surfaces for suitable painting or finishing. Installation of light-weight metal, non-bearing wall partitions, ceiling grid systems, and ceiling tile or panel systems.

S271 - Plastering and Stucco Contractor. Application to surfaces of coatings made of stucco or plaster, including the preparation of the surface and the provision of a base. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S274 - Drywall Contractor. Fabrication, construction and installation of drywall, gypsum, wallboard panels and assemblies.

Preparation of surfaces for suitable painting or finishing. Installation of lightweight metal, non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion.

S281 - Single Ply and Specialty Coating Contractor. Application of solutions of rubber, latex, or other materials or single-ply material to surfaces to prevent, hold, keep, and stop water, other liquids, derivatives, compounds, and solids from penetrating and passing such materials thereby gaining access to material or space beyond such waterproofing.

S282 - Build-up Roofing Contractor. Application of solutions of rubber, latex, asphalt, pitch, tar, or other materials in conjunction with the application of layers, felt, or other material to a roof or other surface.

S283 - Shingle and Shake Roofing Contractor. Application of shingles and shakes made of wood or any other material.

S284 - Tile Roofing Contractor. Application or installation of tile roofs including under layment material and sealing and reinforcement of weight bearing roof structures for the purpose of supporting the weight of the tile.

S285 - Metal Roofing Contractor. On-site fabrication and/or application of metal roofing materials.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian and corian type products.

S300 - General Painting Contractor. Preparation of surface and the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments by the use of brushes, spray or rollers.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor. Grading and preparing land for architectural, horticultural, and the decorative treatment, arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, and other decorative vegetation. Construction of pools, tanks, fountains, hot and green houses, retaining walls, patio areas when they are an incidental part of the prime contract, fences, walks, garden lighting of 50 volts or less, and sprinkler systems.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On site fabrication, construction and installation of swimming pools, spas, and tubs.

S390 - Sewer and Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including

excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, or slurries. Included are the excavation, grading, and backfilling necessary for construction of the system.

S420 - General Fencing and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures so that alterations, additions, repairs, and new sub-structures may be built.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to

provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of floors made up of wood and/or composite wood materials including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports Court and Running Track Installation Contractor. Installation of sports courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts and running tracks. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

(1) Each applicant for a contractors license shall bear the burden and responsibility for presenting to the division and the board satisfactory evidence that the applicant or the applicant's qualifier has that knowledge and experience in the work required of a contractor to provide reasonable assurance the applicant can engage successfully in business as a contractor.

(2) The division and board shall consider all evidence presented including:

- (a) construction related education as approved by the division:
 - (i) in contractor work;
 - (ii) in the conduct of business;
- (b) experience in the construction crafts or trades relating to the classification or subclassification in which licensure is sought:
 - (i) type and length of experience;
 - (A) as a laborer, craftsman or tradesman;
 - (B) as a supervisor or manager;
 - (ii) experience in the conduct of and management of business related to contracting; and
- (c) advisors, consultants, employed management or other resources available to provide supplementary competent management knowledge and experience related to the conduct of a contracting business.

(3) A minimum experience requirement is established for the following classifications:

(a) ~~[a]An~~ applicant for contractor classification E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building shall have a minimum of four years full-time related experience, two years of which shall be in a supervisory or managerial position under the direct supervision of a licensed E100, B100 or R100 contractor, or have been a licensed contractor under a classification other than an E100, B100 or R100 for a minimum of four years. A four year degree in Construction Management may have one year supervisory or managerial experience credited towards the experience requirement. The division may require the applicant to provide written documentation or verification of this experience that is satisfactory to the division.[:]

(b) ~~[a]An~~ applicant for contractor classifications S280 General Roofing, S290 General Masonry, S280 Steel Erection, S350 Heating, Ventilating and Air Conditioning, S360 Refrigeration and

S370 Fire Suppression Systems shall have a minimum of four years of full-time related experience[:].

(c) ~~[a]An~~ applicant for contractor classifications not listed in Subsections (a) and (b) above shall have a minimum of two years of full-time related experience.

KEY: contractors, occupational licensing, licensing
~~[1997]~~**1998** 58-1-106(1)
Notice of Continuation March 3, 1997 58-1-202(1)
58-55-101
58-55-308(1)
58-55-301(1)
58-55-102(21)



Commerce, Occupational and
 Professional Licensing
R156-59
 Employee Leasing Company Act Rules

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 20651
 FILED: 01/13/98, 10:59
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: After review by the Division and the Employee Leasing Company Board, several changes are proposed.

SUMMARY: The numbering is being changed to match the Division's standard format. This includes moving the unprofessional conduct section out of the definitions from Subsection R156-59-102(3) to Section R156-59-501. No change is being made to the substance of the unprofessional conduct section. Subsection R156-59-102(1) is being updated because the previous language was applicable only during the initial licensure cycle which occurred in 1994. A definition of self-funded or partially self-funded insurance plan is being added. A number of applicants have questioned what these terms mean. The Division has used the definition that is published by The Institute for the Accreditation of Professional Employer Organizations (IAPEA). Subsection R156-59-302(1)(e) is being corrected to provide documentation of financial responsibility not just financial statements. Tax returns and credit reports are added to Subsection R156-59-303(1). These documents are necessary to make the review of financial responsibility as provided in Subsection 58-59-102(6). The Division has been requesting these items since employee leasing company licensing began. It also makes this provision consistent with the items listed to be reviewed in Subsection R156-59-303(3). Subsection R156-59-303(4) is being eliminated as it is not appropriate because employee leasing companies have no monetary limit. Section R156-59-306 is corrected to

be consistent with Section 58-59-306 which requires ongoing demonstration of financial responsibility not just providing financial statements at renewal. Section R156-59-307 regarding reorganization of an employee leasing company business entity is being added to clarify when new license applications are required.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 58-59-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: If a currently licensed employee leasing company has a reorganization of the business organization or entity, the company will be required to submit a new application for licensure. New application fees are \$1,500 base annual fee and annual volume fee of \$215 per million in billings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a currently licensed employee leasing company has a reorganization of the business organization or entity, the company will be required to submit a new application for licensure. New application fees are \$1,500 base annual fee and annual volume fee of \$215 per million in billings.

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Dan S. Jones at the above address, by phone at (801) 530-6720, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.ds@jones@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 02/24/98, 10:00 a.m., 160 East 300 South, Room 428, Salt Lake City, UT.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: J. Craig Jackson, Division Director

**R156. Commerce, Occupational and Professional Licensing.
R156-59. Employee Leasing Company Act Rules.**

R156-59-101a. Authority:

~~These rules are adopted in accordance with the authority vested in the division under Subsection 58-1-106(1), and in accordance with provisions of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.]~~

R156-59-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 59, as used in Title 58, Chapters 1 and 59 or these rules~~[Sections 58-1-102 and 58-59-102, as used in these rules]:~~

(1) "Commencing or reentering business" as used in Subsection 58-59-302(6) means that any applicant for licensure, other than a licensee applying for and qualifying for renewal of licensure prior to the expiration of its current license, [person currently registered in good standing with the Division of Corporations and Commercial Code as an employee leasing company as of December 31, 1992 or during the period January 1, 1993 through June 30, 1993, shall be deemed to be a continuing business and]is ~~[not]~~subject to the \$50,000 minimum net worth required in that subsection.

(2) "Current financial statements" means a statement of financial position (balance sheet), and a statement of earnings (income or profit and loss statement) including the schedules and notes that pertain thereto for a period of time ending no earlier than the last tax year end of the entity for which the statements are submitted. Statements are to be prepared in accordance with generally accepted accounting principles and presented in a format and in such detail as prescribed by the division.

(3) "Self-funded or partially self-funded insurance plan" means any plan of insurance or provision of an employee benefits program for which the final premium or cost is retrospectively affected or determined after the end of the policy, plan, or fiscal year based upon actual experience.

~~(3)4~~ "Unprofessional conduct" as defined in Title 58, Chapters 1 and 59 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-59-501.~~[means:~~

— (a) engaging in business as an employee leasing company with a leased employee or client company for which there is not in place a signed contract in form and substance as required by the division under R156-59-304, or

— (b) using one's position as a member of the Employee Leasing Company Licensing Board in any advertisement or representation related to that individual engaging in business as or for an employee leasing company or client company, or in any other way intend to use that position for influence for other than legitimate business of the board.]

R156-59-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 59.

R156-59-104. 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.

R156-59-302. Application for Licensure.

(1) An application for license shall be accompanied by the following documents:

(a) Certificates of Registration or other satisfactory evidence of current appropriate registration with the:

- (i) Division of Corporations and Commercial Code;
- (ii) Department of Employment Security;
- (iii) Utah State Tax Commission; and
- (iv) Internal Revenue Service; and

(b) Certification that the applicant will maintain at the business offices of the applicant evidence of current worker's compensation insurance covering every employee leased by the applicant to a client company if licensure is granted, and that such evidence of insurance shall be available for inspection by a representative of the division during normal business hours.

(c) the form of each and every contract between the employee leasing company and a client company which is used or will be used by the applicant employee leasing company;

(d) the form of each and every contract between the employee leasing company and each employee of that leasing company who is to be leased to a client company; and

(e) documentation of financial [statements]responsibility as required under these rules and Title 58, Chapter 59, the Employee Leasing Company Act.

R156-59-303. Financial Responsibility.

(1) Financial responsibility shall be determined by the totality of history and circumstances relating to an applicant for licensure as an employee leasing company or to a licensed employee leasing company; however, the primary evidence which shall be used by the division is the financial statements, income tax returns and credit reports of the applicant or licensee.

(2) An applicant or licensee shall provide the division with:

(a) current financial statements of the applicant or licensed employee leasing company in substance as prescribed by the division; and

(b) current financial statements audited by a certified public accountant relating to any self-funded or partially self-funded insurance plans maintained by the applicant or licensed employee leasing company for the benefit of employees of the applicant leased to client companies.

(3) An applicant or licensee may provide the division with, or the division may consider on its own:

(a) other evidence regarding the financial responsibility of an applicant or licensee including:

- (i) operating history as an employee leasing company;
- (ii) current and past financial condition and operating results;
- (iii) history of debt or payable payment practices;
- (iv) capitalization of applicant or licensee;
- (v) form of organization and limits on the liability of owners, officers, and managers;

(vi) guarantees of the obligations of the applicant or licensee by other persons;

(vii) credit reports; and

(viii) history of judgements, liens, or other action of a similar nature.

~~(4) [The division shall review financial information submitted by an applicant or licensee against an objective model representative of the industry in making its determination of financial responsibility; however, the results of that comparison shall be advisory only and shall not be the sole criteria used by the division in making a determination whether financial responsibility is demonstrated.~~

~~(5)~~ If the division determines that financial responsibility has not been demonstrated, the division shall advise the applicant or licensee of its finding and the applicant or licensee may submit whatever additional information it may believe will assist the division in making a finding of financial responsibility.

~~([6]5)~~ In accordance with the following schedule, each licensed employee leasing company shall file with the division a report in form as prescribed by the division, certified by an independent certified public accountant, and an owner, partner, officer, or responsible managing employee of the licensee, certifying to the fact that all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, worker's compensation premiums, and employee benefit plan obligations have been paid:

TABLE	
Quarter Ends	Report Due
March 31st	Following June 30th
June 30th	Following September 30th
September 30th	Following December 31st
December 31st	Following March 31st

~~([7]6)~~ Failure of an employee leasing company to submit reports as required by statute or these rules, or upon a finding by the director of reasonable cause to believe the financial responsibility of an employee leasing company is impaired to the extent it poses a threat to the public interest and the employee leasing company fails to submit information requested by issuance of a subpoena duces tecum as is reasonable and necessary to demonstrate financial responsibility, shall be grounds for the division to take appropriate action in accordance with the provisions of Title 63, Chapter 46b, to immediately suspend the license of an employee leasing company.

R156-59-306. Expiration of License - Renewal Requirements.

(1) Each applicant for renewal of an employee leasing company license shall demonstrate continuing qualification for licensure by submission of:

(a) documentation of financial responsibility as outlined in Subsection R156-58-303~~[current financial statements of the employee leasing company in substance as required on forms as prescribed by the division]~~

(b) a qualifying questionnaire; and

~~([b]c)~~ current financial statements of any self-funded or partially self-funded insurance plan in substance as required on forms as prescribed by the division.

R156-59-307. Reorganization of Employee Leasing Company Business Entity.

A reorganization of the business organization or entity under which an employee leasing company is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or the change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

R156-59-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in business as an employee leasing company with a leased employee or client company for which there is not in place a signed contract in form and substance as required by the division under R156-59-304; or

(2) using one's position as a member of the Employee Leasing Company Licensing Board in any advertisement or representation

related to that individual engaging in business as or for an employee leasing company or client company, or in any other way intend to use that position for influence for other than legitimate business of the board.

**KEY: licensing, employee leasing company*
[1993]1998**

**58-1-106(1)
58-1-202(1)
58-59-101**



**Commerce, Securities
R164-4
Licensing Requirements**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 20679
FILED: 01/15/98, 16:44
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Provide an exclusion from licensing for certain types of activity on the Internet; provide an exclusion from licensing and exemption from registration for certain Canadian brokers; and make technical corrections suggested by public comment and from the Governor's Office of Planning and Budget's review.

SUMMARY: Sections R164-4-1, R164-4-2, R164-4-3, R164-4-4, R164-4-5, and R164-4-6 have technical amendments partly as a result of public comment. Section R164-4-7 was added to adopt the North American Securities Administrators Association (NASAA) policy on broker-dealers, investment advisers and other securities personnel using the Internet for general dissemination of information on products and services. This rule clarifies when securities professionals are considered to be transacting business in this state for licensing purposes by distributing information on available products and services through the Internet. Section R164-4-8 was added to adopt the NASAA policy on Limited Registration of Canadian Broker-Dealers and Agents. This rule will provide a very limited exclusion from licensing for Canadian broker-dealers where the only clients in Utah are Canadian citizens residing temporarily in Utah, among other requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 61-1-3, 61-1-4, 61-1-5, 61-1-6, 61-1-13, 61-1-14, and 61-1-24

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 17 CFR 240.15c3-1 (1996), 17 CFR 240.15c3-2 (1996), 17 CFR 240.15c3-3 (1996), 17 CFR 240.17a-5 (1996), 17 CFR 240.17a-10 (1996), and 17 CFR 240.17a-11 (1996)

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Commerce
Securities
Second Floor, Heber Wells Building
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at ttaggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: S. Anthony Taggart, Assistant Director

R164. Commerce, Securities.

R164-4. Licensing Requirements.

R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

- (A) Authority and purpose[?]
- (1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.
- (2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.
- (B) Definitions[used in the rule:]
- (1) "Division" means the Division of Securities, Utah Department of Commerce.
- (2) "CRD" means the Central Registration Depository.
- (3) "NASD" means the National Association of Securities Dealers.
- (4) "NASAA" means the North American Securities Administrators Association, Inc.
- (5) "SEC" means the United States Securities and Exchange Commission.
- (C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements[?]
- (1) License requirements
- (1)(a) To ~~become a licensed broker-dealer~~ license as a broker-dealer, applicant must be a member of the NASD and file with the CRD the following with original signatures as applicable:
 - (1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration[~~-788, which is available from the SEC or the NASD~~];

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) ~~[In addition,]~~ If applicant has or will have an office in Utah, applicant must file with the Division ~~[the following:~~

~~(1)(b)(i) a~~ Certificate of Authority to do business in Utah, available from the Division of Corporations and Commercial Code of the Utah Department of Commerce, ~~only if applicant has or will have an office in Utah];~~

(1)(c) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports, ~~which is available from the SEC or the NASD,~~ in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew license, applicant must submit the license fee specified in the Division's fee schedule before December 31, to the CRD.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer, ~~5/87, which is available from the SEC~~.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To ~~[become a licensed broker-dealer agent]~~ license as a broker-dealer agent, applicant or the sponsoring broker-dealer must file with the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:

(1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer, ~~4/90, which is available from the NASD~~;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination ~~(USASLE)~~ (Series 63 Exam), which is administered by the NASD, and any other exams required by the SEC or the NASD; and

(1)(a)(iii) a fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit the renewal fee specified in the Divisions fee schedule before December 31 to the CRD.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration, ~~4/90, which is available from the NASD~~].

(3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) ~~[Applicant]~~ Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at one time.

(4)(b) ~~[However, a]~~ A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in a writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license~~[-];~~

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times~~[-];~~ and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To ~~[become a licensed]~~ license as an issuer-agent, applicant or the sponsoring issuer must file with the Division the following:

(1)(a)(i) NASD Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the ~~[USASLE]~~ Series 63 Exam;

(1)(a)(iii) a fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

(1)(b) A certificate of license will not be issued.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must file the following with the Division before December 31 of each year:

(2)(b)(i) NASD Form U-4 with original signatures; and

(2)(b)(ii) The renewal fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file a written request for withdrawal with the Division.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. Licensing fees referred to in this rule are not included.

(3) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "NASD" means the National Association of Securities Dealers.

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser licensing, renewal, and withdrawal requirements

(1) Licensing requirements

(1)(a) To ~~become a licensed investment adviser~~ license as an investment adviser, applicant must file with the Division the following with original signatures as applicable:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, ~~[8/88, which is available from the SEC or NASAA, bearing applicant's SEC investment adviser number and]~~ including applicant's audited balance sheet if required under item ~~[13]~~ 14 of part II of Form ADV;

(1)(a)(ii) NASAA Form U-2 - Uniform Consent to Service of Process, ~~which is available from NASAA or the Division;~~

(1)(a)(iii) Division Form 4-5BIA - ~~[Corporate]~~ Indemnity Bond of Investment Adviser, ~~[2/9/90, which is available from the Division;]~~ if required by Section R164-4-5, or proof of membership in SIPC;

(1)(a)(iv) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer, ~~[4/90, which is available from the NASD];~~

(1)(a)(v) proof that applicant or applicant's designated official, if applicant is a partnership or corporation:

(1)(a)(v)(aa) passed the Series 65, Uniform Investment Adviser Law Exam (Series 65 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD;

(1)(a)(v)(bb) the Division will consider applicant's request for waiver of this requirement if, prior to April 23, 1990, applicant was licensed as an investment adviser in another jurisdiction, with the Securities and Exchange Commission, or if applicant submits other evidence, satisfactory to the Division, of applicant's knowledge of the law pertaining to investment advisers and of applicant's competence to supervise investment adviser representatives.

(1)(a)(vi) a certificate of authority to do business in Utah, available from the Division of Corporations and Commercial Code of the Utah Department of Commerce, if applicant is an out-of-state investment adviser with a branch office in Utah;

(1)(a)(vii) the fee as specified in the Division's fee schedule.

(1)(b) A certificate of license will not be issued.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit the following to the Division, with original signatures as applicable, before December 31:

(2)(b)(i) Division Form 4-1 IAR, Application for Renewal of Investment Adviser License;

(2)(b)(ii) the renewal fee specified in the Division's fee schedule;

~~[(2)(b)(ii)]~~ (2)(b)(iii) a copy of applicant's most recent [SEC Form ADV-S - Annual Report for Investment Advisers Registration under the Investment Advisors Act of 1940, which is available from the SEC] SEC Form ADV - Uniform Application for Investment Adviser Registration;

~~[(2)(b)(iii)]~~ (2)(b)(iv) Division Form 4-5BIA, [indemnity bond, which is available from the Division;] Indemnity Bond of Investment Adviser, if [otherwise] required by Section R164-4-5;

~~[(2)(b)(iv)]~~ (2)(b)(v) proof that applicant has passed the Series 65 or the Series 66 Exam, if applicant is renewing a license which was issued after April 23, 1990. The Division will consider applicant's request for waiver of this requirement if, prior to April 23, 1990, applicant was licensed as an investment adviser in another jurisdiction, with the Securities and Exchange Commission, or if applicant submits other evidence, satisfactory to the Division, of applicant's knowledge of the law pertaining to investment advisers and of applicant's competence to supervise investment adviser representatives.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with ~~[the SEC and]~~ the Division, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser, ~~[7/88, which is available from the SEC].~~

(3)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(D) Investment adviser representative licensing, renewal, and withdrawal requirements

(1) Licensing requirements

(1)(a) To ~~become a licensed investment adviser representative~~ license as an investment adviser representative, applicant must file the following with original signatures as applicable with the Division:

(1)(a)(i) NASD Form U-4;

(1)(a)(ii) proof applicant passed the Series 65 or the Series 66 Exam. The Division will consider applicant's request for waiver of this requirement if applicant:

(1)(a)(ii)(aa) is a certified public accountant who has passed the Accredited Personal Financial Specialist examination (APFSE);

(1)(a)(ii)(bb) has qualified for and received a designation as a Certified Financial Planner (CFP), Chartered Financial Consultant (ChFC), Chartered Financial Analyst (CFA), or similar designation, suitable to the Division, which evidences applicant's professional competence to provide investment advice or investment advisory services; or

(1)(a)(ii)(cc) is licensed with a broker-dealer, has passed the Series 63, Uniform Securities Agent State Law Examination ~~[(USASLE)]~~ (Series 63 Exam) and either the Series 6, Investment

Company Products/Variable Contracts Representative Examination, Series 6 Exam, or the Series 7, General Securities Representative Examination, Series 7 Exam, which are administered by the NASD, and the extent of applicant's investment advisory services is the referral of applicant's clients to a duly licensed investment adviser; and

- (1)(a)(iii) a fee as specified in the Division's fee schedule.
- (1)(b) A certificate of license will not be issued.
- (2) License renewal requirements
 - (2)(a) All licenses expire on December 31 of each year.
 - (2)(b) To renew license, applicant must:

(2)(b)(i) provide proof that applicant has passed the Series 65 or the Series 66 Exam if applicant is renewing a license which was issued after April 23, 1990. The Division will consider applicant's request for waiver of this requirement if applicant:

(2)(b)(i)(aa) is a certified public accountant who has passed the APFSE;

(2)(b)(i)(bb) has qualified for and received a designation as a CFP, ChFC, CFA, or similar designation, suitable to the Division, which evidences applicant's professional competence to provide investment advice or investment advisory services; or

(2)(b)(i)(cc) is licensed with a broker-dealer, has passed the ~~USASLE~~ Series 63 Exam and either the Series 6 Exam or the Series 7 Exam, and the extent of applicant's investment advisory services is the referral of applicant's clients to a duly licensed investment adviser; and

(2)(b)(ii) submit the renewal fee specified in the Division's fee schedule to the Division before December 31.

- (3) License or application withdrawal requirements

(3)(a) To withdraw a license or application applicant must file a written request for withdrawal with the Division.

(3)(b) a withdrawal is effective thirty days following receipt of applicant's written request for withdrawal, unless the Division notifies applicant otherwise.

- (4) Miscellaneous provisions

(4)(a) ~~Applicant~~ Except as provided in subparagraph (D)4(b), applicant may associate with only one investment adviser at one time.

(4)(b) ~~However, a~~ A dual license may be allowed by the director if:

(4)(b)(i) Applicant requests a dual license in a writing to the Division which identifies the investment advisers with which applicant intends to associate and sets forth the reasons for the dual license.

(4)(b)(ii) Both investment advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times.

- (4)(b)(iii) Applicant discloses dual license to each client.

(E) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

- (1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

- (2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

- (3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (E) if:

(4)(a)(i) Providing, advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "NASD" means the National Association of Securities Dealers.

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration [~~(4/90), which is available from the NASD~~].

(C) Testing requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Exam [~~("USASLE")~~](Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), and any other examination required by the NASD in connection with a new application, which are administered by the NASD, if the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application.

(2) An issuer-agent must pass the [~~USASLE~~]Series 63 Exam or the Series 66 Exam if the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application.

(3) An investment adviser or investment adviser representative must pass the Series 65, Uniform Investment Adviser Law Exam (Series 65 Exam) or the Series 66 Exam, which are administered by the NASD, if the investment adviser or investment adviser representative's most recent license terminated two or more years before the date of receipt by the Division of a new application.

(D) Correcting amendments

(1) A broker-dealer or broker-dealer agent must promptly file with the CRD, and not the Division, amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration, [~~7/88~~] or NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer, [~~4/90, which are available from the NASD~~], in accordance with the instructions on those forms.

(2) An issuer-agent, investment adviser, or investment adviser representative must promptly file with the Division amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration, [~~8/88, which is available from the SEC~~], NASD Form U-4 or any other information which materially changes the information on file with the Division.

(E) Designation of CRD

(1) The Division authorizes the CRD to receive filings on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) Documents filed with the CRD by licensees or applicants are deemed to be filed with the Division.

(3) The Division may request a copy of any document filed with the CRD.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, NASD Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) ~~[Unless]~~ Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(2)(a) A trial balance of all ledger accounts;

(2)(b) A statement of all client funds or securities which are not segregated;

(2)(c) A computation of the aggregate amount of client ledger debit balances; and

(2)(d) A statement as to the number of client accounts.

(3) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(4) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer" [~~which is available from the Division~~]; and

(2)(c) be in the amount of \$25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least \$25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) ~~[Every]~~ Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, [“]Corporate Indemnity Bond of Investment Adviser[“], ~~which is available from the Division~~.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, [“]Escrow Agreement[“], ~~which is available from the Division~~.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered ~~[advisors]~~advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with the Division or the CRD the following with original signatures as applicable:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) ~~[NASAA Form U-2 - Uniform Consent to Service of Process; and~~

~~—(3)—~~a fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, ~~[applicant]~~a federal covered adviser must submit the following to the Division or the CRD, with original signatures as applicable, before December 31:

(2)(a) a copy of ~~[applicant's]~~the federal covered adviser's most recent ~~[SEC Form ADV-S - Annual Report for Investment Advisors Registration under the Investment Advisors Act of 1940; and]~~SEC Form ADV; and

(2)(b) a fee as specified in the Division's fee schedule.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep

that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

KEY: securities, securities regulation
[July 14, 1997]March 1998

61-1-3
61-1-4
61-1-5
61-1-6
61-1-13
61-1-14
61-1-24



Commerce, Securities
R164-5
Broker-Dealer and Investment Adviser
Books and Records

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 20680

FILED: 01/15/98, 16:44

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Make technical changes suggested by public comment and from the Governor's Office of Planning and Budget's review.

SUMMARY: This rule is being amended to make technical changes that better clarify the intent of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 61-1-5 and 61-1-24

THIS FILING INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 17 CFR 240.17a-3 (1996), 17 CFR 240.17a-4 (1996), 17 CFR 240.15c2-6 (1991), 17 CFR 240.15c2-11 (1996), and 17 CFR 275.204-2 (1996)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Commerce
Securities
Second Floor, Heber Wells Building
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at ttaggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: S. Anthony Taggart, Assistant Director

R164. Commerce, Securities.**R164-5. Broker-Dealer and Investment Adviser Books and Records.****R164-5-1. Recordkeeping Requirements of Broker-Dealers and Investment Advisers.**

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the books and records a broker-dealer and an investment adviser must maintain.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer requirements

(1) Unless otherwise provided by order of the SEC, each broker-dealer licensed or required to be licensed under this Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4(1996)), 15c2-6 (17 CFR 240.15c2-6(~~1996~~)(1991)) and 15c2-11 (17 CFR 240.15c2-11(1996)), which are adopted and incorporated by reference.

(2) To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

(D) Investment adviser requirements

(1) [~~Unless~~]Except as provided in subparagraph (D)(3), unless otherwise provided by order of the SEC, each investment adviser licensed or required to be licensed under the Act shall make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2(1996)), which is adopted and incorporated by reference, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(2) To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(3) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

R164-5-3. Financial Reporting of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the annual financial reports required of a broker-dealer and an investment adviser.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer required financial statements

(1) Upon request, each broker-dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of Paragraph (E)[~~or an independent public accountants~~].

(D) Investment Adviser required financial statements

(1) ~~Each~~ Except as provided in subparagraph (D)(2), each investment adviser who has custody or possession of client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Paragraph (E).

(2) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state, is in compliance with such state's financial reporting requirements, and annually files with the Division a copy of any financial reports filed with such state.

(E) Financial statement requirements

The financial statements filed pursuant to this rule must:

(1) include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements.

(2) be prepared in accordance with generally accepted accounting principles.

(3) be audited by an independent certified public accountant. The audit must:

(a) be made in accordance with generally accepted auditing standards;

(b) include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds including appropriate tests thereof since the prior examination.

(4) be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed.

(5) The financial statements shall be filed with the Division within 90 days following the end of the investment ~~adviser's~~ licensee's ~~adviser's~~ fiscal year.

KEY: securities, securities regulation

~~[July 14, 1997]~~ March 1998

61-1-5

61-1-24



Commerce, Securities
R164-6-1g
Dishonest or Unethical Business
Practices

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 20681

FILED: 01/15/98, 16:44

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Make technical changes suggested by public comment and from the Governor's Office of Planning and Budget's review.

SUMMARY: This amendment makes technical changes to better clarify the intent of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Subsection 61-1-6(1)(g), and Section 61-1-24

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None.

❖ LOCAL GOVERNMENTS: None.

❖ OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Commerce
Securities
Second Floor, Heber Wells Building
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at ttaggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: S. Anthony Taggart, Assistant Director

R164. Commerce, Securities.

R164-6. Denial, Suspension or Revocation of a License.

R164-6-1g. Dishonest or Unethical Business Practices.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-6 and 61-1-24.

(2) This rule identifies certain acts and practices which the Division deems violative of Subsection 61-1-6(1)(g). The list contained herein should not be considered to be all-inclusive of acts and practices which violate that subsection, but rather is intended

to act as a guide to broker-dealers, agents, investment advisers, and federal covered advisers as to the types of conduct which are prohibited.

(3) Conduct which violates Section 61-1-1 may also be considered to violate Subsection 61-1-6(1)(g).

(4) This rule is patterned after well-established standards in the industry which have been adopted by the SEC, the NASD, NASAA, the national securities exchanges and various courts. It represents one of the purposes of the securities laws: to create viable securities markets in which those persons involved are held to a high standard of fairness with respect to their dealings with the public.

(5) The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive, or to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(6) The federal statutory and regulatory provisions referenced in Paragraph (E) shall apply to investment advisers and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Market maker" means a broker-dealer who, with respect to a particular security:

(2)(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(2)(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(2)(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "NASD" means the National Association of Securities Dealers.

(5) "NASDAQ" means National Association of Securities Dealers Automated Quotation System.

(6) "OTC" means over-the-counter.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealers

In relation to Broker-Dealers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include~~[-but not be limited to the following]:~~

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or both.

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

(4) executing a transaction on behalf of a customer without prior authorization to do so.

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.

(6) executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) failing to segregate a customer's free securities or securities held in safekeeping.

(8) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules and regulations of the SEC.

(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(10) failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(11) charging fees for services without prior notification to a customer as to the nature and amount of the fees.

(12) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(13) offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell.

(14) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer.

(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(15)(a) effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(15)(b) entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing

in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(15)(c) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security, for the purpose of inducing the purchase or sale of the security by others.

(16) guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer.

(17) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which:

(17)(a) purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or

(17)(b) purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(18) using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of the prohibited practice would be distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure.

(19) failing to disclose to a customer that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(20) failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.

(21) failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(22) permitting a person to open an account for another person or transact business in the account unless there is on file written authorization for the action from the person in whose name the account is carried.

(23) permitting a person to open or transact business in a fictitious account.

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor.

(25) in connection with the solicitation of a sale or purchase of an OTC, non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer.

(26) marking any order tickets or confirmations as "unsolicited" when in fact the transaction is solicited.

(27) for any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain; provided that, this subsection shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

(28) failing to comply with any applicable provision of the Conduct Rules of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is approved by the SEC.

(29) any acts or practices enumerated in Section R164-1-3.

(30) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division.

(D) Agents.

In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include~~[- but not be limited to the following]~~:

(1) engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, in the case of agents of broker-dealers, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(3) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(4) sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents.

(5) dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(6) for agents who are dually under Rule R164-4-1(D)(4)(b), failing to disclose the dual license to a client.

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29) or (C)(30) of Rule R164-6-1g.

(E) Investment Advisers and Federal Covered Advisers

In relation to investment advisers~~[-and federal covered advisers]~~, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include~~[- but not be limited to the following]~~ the following listed practices. In relation to federal covered advisers, as used in Subsection 61-1-6(1)(g), "dishonest or unethical practices" shall include the following, but only if such conduct involves fraud or deceit:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(11)(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(11)(b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, ~~circulation~~ circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the ~~advisors'~~ adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under this Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940 notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder.

KEY: securities regulation

[July 14, 1997] March 1998

61-1-6(1)(g)

61-1-24



Commerce, Securities
R164-26-6
Consent to Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 20682
FILED: 01/15/98, 16:44
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Make technical changes suggested by public comment.

SUMMARY: This rule is being amended to clarify that persons that file a Form U-4, Form ADV, or Form BD do not need to file a Form U-2 to satisfy the requirement of filing a consent to service of process.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 61-1-26 and 61-1-24

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
- ❖ LOCAL GOVERNMENTS: None.
- ❖ OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Commerce
Securities
Second Floor, Heber Wells Building
160 East 300 South
PO Box 146760
Salt Lake City, UT 84114-6760, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
S. Anthony Taggart at the above address, by phone at (801) 530-6600, by FAX at (801) 530-6980, or by Internet E-mail at taggart@br.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: S. Anthony Taggart, Assistant Director

R164. Commerce, Securities.
R164-26. Consent to Service of Process.
R164-26-6. Consent to Service.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-26 and 61-1-24.

(2) This rule designates the form to be used for consents to service of process.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Form

(1) Except as provided in subparagraph (C)(2), for ~~For~~ the purposes of all rules, ~~[regulation and orders of the Division.] regulations, orders of the Division, or the Act,~~ the Consent to Service of Process which is to be used, ~~[where required by the rules, regulations, orders or Utah Uniform Securities Act,]~~ is the NASAA Form U-2 - Uniform Consent to Service of Process.

(2) A Form U-4, Uniform Application for Securities Industry Registration or Transfer, Form ADV, Uniform Application for Investment Adviser Registration, and Form BD, Uniform Application for Broker-Dealer Registration, may be used in lieu of the Form U-2 provided that an originally executed copy of such form is filed with the Division

(D) Agent

All consents to service of process filed with the Division shall appoint the "Director, Utah Division of Securities" as agent for service of process.

(E) Incorporation by reference

For purposes of consents to service of process required to be filed under the Act, a broker-dealer, agent, federal covered adviser, investment adviser, investment adviser representative, or issuer may incorporate by reference in a current application any consent to service of process previously filed with the Division by such person or entity.

KEY: securities regulation
[July 14, 1997] March 1998

61-1-24
61-1-26.6



Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-10A

Transplant Services Standards

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 20652
FILED: 01/13/98, 15:15
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Continued coverage under the present rule would exceed the Department's budget assigned to transplant services.

SUMMARY: Two new definitions were added. Change made at Subsection R414-10A-6(3)(c). Some wording changes made throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 26-1-5 and 26-18-1

FEDERAL MANDATE FOR THIS FILING: Section 9507 of COBRA 1985, Section 1903(i)(1), SSA

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Department will be able to stay within its allotted budget for transplants.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 142906
Salt Lake City, UT 84114-2906, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Dr. John Hylen at the above address, by phone at (801) 538-6019, by FAX at (801) 538-6382, or by Internet E-mail at jhylen@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-10A. Transplant Services Standards.

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R414-10A-2. Definitions.

For purposes of R414-10A:

(1) "Abstinence" means the documented non-use of any abusable psychoactive substance.

(2) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(3) "Age group" means patients documented in the medical literature with an age at the time of transplantation related to the current age of the client as listed below:

- (a) Birth through 12 months;
- (b) One through 12 years;

- (c) 13 through 20 years;
- (d) 21 through 30 years;
- (e) 31 through 40 years; or
- (f) 41 through 54 years.

(g) Department medical consultants may consider other age groups, documented by the medical literature and the transplant center to have conclusive relevance to the client's survival.

(4) "Active substance abuse" means the current use of any abusable psychoactive substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(8) "Department" means the Utah Department of Health.

(9) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10) "Increase in life expectancy" means the difference in the average number of years of life between the life expectancy of the control group of patients compared to the life expectancy of the transplantation group.

~~(11)~~ "Intestine transplantation" means transplantation of both the small bowel and colon.

(12) "Life expectancy" means the average number of years of life remaining for the age group of the client at the time the Department receives the prior authorization request.

~~(13)~~ "Medical literature" means articles and medical information which have been peer reviewed and accepted for publication or published.

~~(14)~~ "Medically necessary" means a client's medical condition which meets all the criteria and none of the contraindications for the type of transplantation requested.

~~(15)~~ "Multiple transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same or different operative procedure.

~~(16)~~ "Multivisceral transplantation" means the transplantation of liver, pancreas, omentum, stomach, small intestine and colon.

~~(17)~~ "Patient" means a person who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

~~(18)~~ "Remission" means the lack of any evidence of the leukemia on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for clients who are receiving maintenance chemotherapy.

~~(19)~~ "Services" means the type of medical assistance specified in sections 1905(a)(1) through (24) of the Social Security Act and interpreted in the 42 CFR Section 440, Subpart A, October 1992 edition, which is adopted and incorporated by reference.

~~(20)~~ "Substance abuse rehabilitation program" means a rehabilitation program developed and conducted by an inpatient facility that, at a minimum, meets the standards of organization and

staff of a chemical dependency/substance abuse specialty hospital specified in R432-102-4.5.

(19)21) "Syngeneic" means possessing identical genotypes, as monozygotic or identical twins.

(20)22) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, except for skin, tendon, and bone.

(21)23) "Vital end-organs" means organs of the body essential to life, e.g., the heart, the liver, the lungs, and the brain.

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R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for cornea and kidney transplantation.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except cornea or kidney, must contain all of the following:~~[information and documentation:]~~

(a) ~~A~~ [R]request for Prior Authorization Form 24-06-37, completed and signed by the physician.

(b) A description of the medical condition which necessitates a transplantation.

(c) ~~[The client's prognosis, with and without a transplant, including estimated life expectancy]~~Medical literature from the transplant center documenting the client's life expectancy, with and without a transplant. The transplant center staff must complete and submit to the Department for staff review and evaluation, a medical literature review documenting a probability of successful clinical outcome for patients receiving transplantation for the specific age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. This review of the medical literature must document an increase in life expectancy between control group(s) and transplantation group(s). The Department shall use independent research by medical consultant(s) to evaluate the documentation submitted by the transplant center.

(d) Transplantation treatment alternatives utilized previous to the transplantation request.

(e) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.

(f) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

(g) Comprehensive psycho-social evaluation of the client by a board-certified or board-eligible psychiatrist. The evaluation must include a comprehensive history regarding substance abuse and compliance with medical treatment.

(h) Psycho-social evaluation of parent(s) or guardian(s) of the client, by a board-certified or board-eligible psychiatrist if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.

(i) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.

(j) Comprehensive psychological or developmental testing, as requested by the Department.

(k) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.

(l) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.

(m) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health
Bureau of Coverage and Reimbursement Policy
Utilization Management Unit
Transplant Coordinator
288 North 1460 West
Box 142904
Salt Lake City, Utah 84114-2904

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R414-10A-9. Criteria and Contraindications for Bone Marrow Transplantation.

(1) Bone marrow transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for bone marrow transplantation must meet requirements of R414-10A-9(2)(a) or (b).

(a) Allogenic and syngeneic bone marrow transplantations may be approved for payment only when the client has an HLA-matched donor. The donor must be compatible for all or a five-out-of-six match of World Health Organization recognized HLA-A, -B, and -DR antigens as determined by appropriate serologic typing methodology.

(i) A search of related family members, for a suitable donor, is authorized for payment only after a written prior authorization request has been received by the Department.

(ii) A search of unrelated persons by HLA-type, for a suitable donor, will not be authorized for payment by the Department until the client has been documented to meet all other criteria in this rule for bone marrow transplantation except an HLA-matched donor.

(iii) The transplant center staff must complete, and submit to the Department for evaluation, a current medical literature review, documenting a [~~minimum~~]probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Autologous bone marrow or peripheral blood stem cell transplantation performed in conjunction with total body radiation or high dose chemotherapy, may be approved for payment only if a current medical literature review, completed by the transplant center staff and sent to the Department for staff review and evaluation, documenting a [~~minimum~~]probability of successful

clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Clients for autologous bone marrow transplantations must have adequate marrow function and no evidence of marrow involvement by the primary malignancy at the time the marrow is harvested.

(3) In addition to meeting the requirements of R414-10A-9(2)(a) or (b), the client for bone marrow transplantation must meet the requirements of at least R414-10A-9(3)(a) or (b).

(a) The client must have irreversible, progressive bone marrow disease with a life expectancy of one year or less without transplantation or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the bone marrow transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) In addition to meeting the requirements listed in R414-10A-9, (1) through (3), the client must meet all of the following requirements:

(a) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(b) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(c) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(d) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(e) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(f) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff

review and evaluation, documenting that the underlying original bone marrow disease will not recur and limit survival to less than 75% one-year survival rate, or to less than 55% three-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(5) Any single contraindication listed below precludes approval for Medicaid payment for bone marrow transplantation:

- (a) Active infection.
- (b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more vital end-organs.
- (c) Active substance abuse.
- (d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome or interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.
- (e) Human Immunodeficiency Virus (HIV) antibody positive.
- (f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.
- (g) Pulmonary diseases:
 - (i) Cystic fibrosis.
 - (ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).
 - (iii) Restrictive pulmonary disease (FVC less than 50% of predicted).
 - (iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.
 - (v) Recent or unresolved pulmonary infarction.
- (h) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate, or a greater than or equal to 55 percent three-year survival rate, or by meeting the one-year and three-year survival rates after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.
 - (i) Cardiovascular diseases:
 - (i) Intractable cardiac arrhythmias.
 - (ii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.
 - (iii) Severe generalized arteriosclerosis.
 - (j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.
 - (k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:
 - (i) Non-compliance with medications or therapy.
 - (ii) Failure to keep scheduled appointments.
 - (iii) Leaving the hospital against medical advice.
 - (iv) Active substance abuse.
- (6) Prior to the approval of transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure

compliance to medication and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in R414-10A-9(5)(k)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-10. Criteria and Contraindications for Heart Transplantation.

(1) Heart transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart transplantation must meet requirements of at least R414-10A-10(2)(a) or (b).

(a) The client must have irreversible, progressive heart disease, with a life expectancy of one year or less[;] without transplantation, or documented evidence of progressive pulmonary hypertension, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the heart transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting at least one of the requirements listed in R414-10A-10(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Severe cardiac dysfunction.

(c) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(d) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) The client must have strong motivation to undergo the procedure, as documented by the medical and psycho-social assessment.

(g) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(h) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original heart disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for heart transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-cardiac vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Severe pulmonary hypertension documented in patients 18 years of age and older by a pulmonary vascular resistance greater than eight Wood units, or pulmonary vascular resistance of six or seven Wood units in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than three Wood units or is unable to reduce the pulmonary artery systolic pressure to below 50 mmHg.

(ii) Severe pulmonary hypertension documented in patients less than 18 years of age and more than six months of age by a pulmonary vascular resistance greater than six pulmonary vascular resistance index units (PVRI), or in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than six PVRI.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. Non-compliance is demonstrated by documentation of any of the behaviors listed in R414-10A-10(4)(k)(i) through (iv).

R414-10A-11. Criteria and Contraindications for Intestine Transplantation.

(1) Intestine transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine transplantation must meet the requirements of at least R414-10A-11(2)(a) or (b).

(a) The client must have irreversible, progressive small bowel and large bowel disease, with a life expectancy of one year or less[without transplantation], or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The client must have short bowel syndrome that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.

(3) In addition to meeting at least one of the requirements listed in R414-10A-11(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel graft function rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(d) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(e) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(g) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(h) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original intestinal disease will not recur and limit graft function survival to less than 75% one-year survival rate.

(i) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 85% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent

research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-11(4)(k)(i) through (iv).

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R414-10A-13. Criteria and Contraindications for Liver Transplantation.

(1) Liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) A client for liver transplantation must meet requirements of at least R414-10A-13(2)(a) or (b).

(a) The client must have irreversible, progressive liver disease with a life expectancy of one year or less without transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the liver transplantation will prevent the irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-13(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver transplantation for the age group, specific diagnosis(es), condition, and type of liver transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original liver disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for liver transplantation:

(a) Active infection outside the hepatobiliary system.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-hepatic vital end-organs.

(c) Hepatitis B surface antigen positive, except for cases of fulminant hepatitis B.

(d) Stage IV hepatic coma.

(e) Active substance abuse.

(f) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(g) Human Immunodeficiency Virus (HIV) antibody positive.

(h) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(i) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(j) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(k) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria: "Goldman, L. et al. Comparative reproducibility and validity of systems assessing cardiovascular functional class: Advantages of a new specific activity scale. American Heart Association Circulation 64: 1227, 1981.", adopted and incorporated by reference.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(l) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(m) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance with medications and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in R414-10A-13(4)(m)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-14. Criteria and Contraindications for Lung Transplantation.

(1) Lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for lung transplantation must meet requirements of at least R414-10A-14(2)(a) or (b).

(a) The client must have end stage lung disease, with a life expectancy of one year or less[?] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review, specific to the client's diagnosis and condition, documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the lung transplantation will prevent the irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-14(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) The client with a history of substance abuse must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original lung disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below shall preclude approval for payment for lung transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-pulmonary vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation for the patient.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(g) Cardiovascular diseases:

(i) Myocardial infarction within six months;

(ii) Intractable cardiac arrhythmias;

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease;

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-14(4)(j)(i) through (iv).

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R414-10A-16. Criteria and Contraindications for Small Bowel Transplantation.

(1) Small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for small bowel transplantation must meet requirements of at least R414-10A-16(2)(a) or (b).

(a) The client must have irreversible, progressive small bowel disease, with a life expectancy of one year or less[;] without transplantation, or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.

(b) The client must have short bowel syndrome that requires daily total parenteral nutrition with no other reasonable medical or surgical alternative to transplantation available.

(3) In addition to meeting one of the requirements listed in R414-10A-16(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability for successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(d) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(e) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(g) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(h) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original small bowel disease will not recur and limit small bowel function survival to less than 85% one-year survival rate.

(i) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below shall preclude approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Human Immunodeficiency Virus (HIV) antibody positive.

(f) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(g) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(h) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(i) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(j) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(k) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in R414-10A-16(4)(k)(i) through (iv).

R414-10A-17. Criteria and Contraindications for Heart and Lung Transplantation.

(1) Heart-lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart-lung transplantation must meet requirements of at least R414-10A-17(2)(a) or (b).

(a) The client must have irreversible, progressive heart and lung disease, with a life expectancy of one year or less[;] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the heart-lung transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-17(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart-lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The requirements listed in:

- (i) R414-10A-10(3)(b) through (h).
- (ii) R414-10A-10(4)(a) through (h), and (j) through (k).
- (iii) R414-10A-10(5).

R414-10A-18. Criteria and Contraindications for Intestine and Liver Transplantation.

(1) Intestine-liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine-liver transplantation must meet requirements of at least R414-10A-18(2)(a) or (b).

(a) The client must have irreversible, progressive liver and intestinal disease, with a life expectancy of one year or less[;] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation

available. The medical literature must also document that the intestine-liver transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-18(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving intestine-liver transplantation for the age group, specific diagnosis(es), and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-19. Criteria and Contraindications for Kidney-Pancreas Transplantation.

(1) Kidney-pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for kidney-pancreas transplantation must meet requirements of at least R414-10A-19(2)(a) or (b).

(a) The client must have irreversible, progressive end-stage renal disease and type I diabetes mellitus, with a life expectancy of one year or less[;] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the

kidney-pancreas transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-19(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year kidney and pancreas function rates for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 90% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-12(2)(d) through (i).
- (ii) R414-10A-12(3)(a) through (k).
- (iii) R414-10A-12(4).

R414-10A-20. Criteria and Contraindications for Combined Liver-Kidney Transplantation.

(1) Liver-kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-kidney transplantation must meet requirements of at least R414-10A-20(2)(a) or (b).

(a) The client must have irreversible, progressive liver-kidney disease, with a life expectancy of one year or less[-] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review, specific to the client's diagnosis and condition, documenting that the condition will cause irreversible, progressive disease to vital end-organs within the next two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature review must also document that the liver-kidney transplantation will

prevent the irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting the requirements listed in R414-10A-20(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting a renal graft function rate greater than or equal to 75 percent at one year for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-21. Criteria and Contraindications for Multivisceral Transplantation.

(1) Multivisceral transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for multivisceral transplantation must meet requirements of at least R414-10A-21(2)(a) or (b).

(a) The client must have irreversible, progressive liver, pancreas and small bowel disease, with a life expectancy of one year or less[-] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the multivisceral transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff

medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-21(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year pancreas and small bowel function rates for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

R414-10A-22. Criteria and Contraindications for Liver and Small Bowel Transplantation.

(1) Liver-small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-small bowel transplantation must meet requirements of at least R414-10A-22(2)(a) or (b).

(a) The client must have irreversible, progressive liver and small bowel disease, with a life expectancy of one year or less[;] without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the liver-small bowel transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff

medical consultants to evaluate the documentation submitted by the transplant center.

(3) In addition to meeting one of the requirements listed in R414-10A-22(2), the client must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) R414-10A-13(3)(b) through (g).
- (ii) R414-10A-13(4)(a) through (m).
- (iii) R414-10A-13(5).

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KEY: medicaid

~~[June 24, 1997]~~1998

Notice of Continuation March 14, 1997

26-1-5

26-18-1



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-22
Administrative Sanction Procedures
and Regulations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 20654

FILED: 01/13/98, 15:15

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This rule needed to be brought up to date in both language and format. Some deletions and some additions are necessary to clarify the rule.

SUMMARY: Changes include deleting areas that do not apply, and adding areas that currently apply, clarifying the rule to depict the obligations and responsibilities of providers, consequences for misdeeds, and putting the rule in current format.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 26-1-5, and Subsections 26-18-3(2) and 26-18-3(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: None.
- ❖LOCAL GOVERNMENTS: None.
- ❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Health
 Health Care Financing,
 Coverage and Reimbursement Policy
 Cannon Health Building
 288 North 1460 West
 Box 142906
 Salt Lake City, UT 84114-2906, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Robert Stewart at the above address, by phone at (801) 538-6404, by FAX at (801) 538-6099, or by Internet E-mail at rstewart@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-22. Administrative Sanction Procedures and Regulations.

R414-22-1. Introduction and Authority.

[General Provisions

— 1. Introduction

From time to time administrative sanctions against Medicaid providers may be necessary when program benefits have been abused or improperly applied. These Administrative Sanction Procedures and Regulations have been established to provide the Division of Health Care Financing (DHCF) with the administrative procedures to ensure the most effective and efficient operation of the Medicaid program possible.

— 2. Authority

These regulations are issued pursuant to the authority granted DHCF by Utah Code Sections 26-1-5, 26-18-3(2) and (4) to implement the Medicaid program by such rules and regulations as are necessary for the proper and efficient operation of the State Plan for Medical Assistance: (1) In order to effectively and efficiently operate the Medicaid program, the Department may implement administrative sanctions against providers who abuse or improperly apply the benefit program.

(2) This rule is authorized by Sections 26-1-5, 26-18-3(2) and (4).

— 3. Definitions

R414-22-2. Definitions.

The definitions in R414-1 apply to this rule. In addition:

((a)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.

((b)2) "Conviction" or "Convicted" means a criminal conviction entered by a [F]ederal or [S]tate court for fraud involving Medicare or Medicaid regardless of whether an appeal from that judgment is pending.

((c)3) "Fiscal agent" means an organization [which]that processes and pays provider claims on behalf of the Department[DHCF].

((d)4) "Fraud" means intentional deception or misrepresentation made by a person [which]that results in some unauthorized Medicaid benefit to himself or some other person. It includes any act that constitutes fraud under applicable [S]tate law.

((e)5) "Offense" means any of the grounds for sanctioning set forth in Section [4;]3 below.

((f)6) "Person" means any natural person, company, firm, association, corporation or other legal entity.

((g)7) "Practitioner" means a physician or other individual licensed under [S]tate law to practice his [or her]profession.

((h)8) "Provider" means an individual or other entity who has been approved by the Department to provide services to Medicaid clients, and who has signed a provider contract with the Department[; firm, partnership, corporation, association or institution which provides, or has been approved to provide medical assistance to a recipient pursuant to the State Medicaid program].

((i)9) "Suspension" means that Medicaid items or services provided by a provider under suspension[furnished by a specified provider with] shall not be reimbursed by the Department[under Medicaid].

((j)10) "Termination from participation" means termination of the existing provider contract[agreement].

— 4. Grounds for Sanctioning Providers

Sanctions may be imposed by DHCF against a provider for any one or more of the following grounds:]

R414-22-3. Grounds for Sanctioning Providers.

The Department may impose sanctions against providers who:

((a)1) [K]knowingly present[ing] or cause[ing] to be presented, to Medicaid any false or fraudulent claim, other than simple billing errors, for services or merchandise[; or

(b)2) [K]knowingly submit[ing] or cause[ing] to be submitted, false information for the purpose of obtaining greater Medicaid reimbursement than the provider is legally entitled to[-]; or

(c)3) [K]knowingly submit[ing] or cause[ing] 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 his suspension or termination from the Medicaid program[-]; or (See Section 6b(2)-)

(d)4) [K]knowingly submit[ing] or cause[ing] to be submitted, false information for the purpose of meeting Medicaid prior authorization requirements[-]; or

(e)5) [F]fail[ure] to keep records that are necessary to substantiate services [rendered]provided to Medicaid recipients[-]; or

(f)6) [F]fail[ure] to disclose or make available to the Department[DHCF], its authorized agents, [and/]or the State Fraud Control Unit, records or services provided to Medicaid recipients [and/]or records of payments made for those services[-]; or

(g)7) [F]fail[ure] to provide services to Medicaid recipients in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate [S]state regulatory agencies[-]; or

(h)8) [B]breach [of-]the terms of the Medicaid provider agreement[-]; or

(i)9) [F]fail[ure] to comply with the terms of the provider certification on the Medicaid claim form[-]; or

(j)10) [O]ver-utilize[ing] the Medicaid program by inducing, [furnishing]providing, or otherwise causing a Medicaid recipient to receive service(s) or merchandise [which]that is not medically necessary[-]; or

(k)11) [R]ebate[ing] or accept[ing] a fee or portion of a fee or charge for a Medicaid recipient referral[-]; or

(l)12) [V]iolate[ing] the Utah State Medical Assistance Act, [UCA]Section 26-18-2 UCA[et seq.], or any other applicable rule or regulation[-promulgated pursuant thereto.]; or

(m)13) [K]knowingly submit[ing] a false or fraudulent application for Medicaid provider status[-]; or

(n)14) [V]iolate[ions of] any laws or regulations governing the conduct of health care occupations, professions, or regulated industries[-]; or

(o)15) are [C]onvicted[rom] of a criminal offense relating to performance as a Medicaid provider[-]; or

(p)16) conduct a [N]egligent practice resulting in death or injury to patients as determined in a judicial proceeding[-]; or

(q)17) [F]fail[ure] to comply with standards required by [S]state or [F]federal laws and regulations for continued participation in the Medicaid program[-]; or (For example, licensure-)

(r)18) conduct a [D]ocumented practice of charging Medicaid recipients for Medicaid covered services over and above amounts paid by the Department[DHCF] unless there is a written agreement signed by the recipient that such charges will be paid by the recipient[-]; or

(s)19) [R]efuse[an] to execute a new Medicaid provider agreement when doing so is necessary to ensure compliance with [S]state or [F]federal law or regulations[-]; or

(t)20) [F]fail[ure] to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, HCFA form 2567, in provider operations within a specific time frame agreed to by the Department[DHCF] and the provider(s), or pursuant to a court or formal administrative hearing decision[-]; or

(u)21) are [S]uspended[ion] or terminated[ion] from participation in Medicare for failure to comply with the laws and regulation governing that program[-]; or

(v)22) [F]fail[ure] to obtain or maintain all licenses required by [S]state or [F]federal law to legally provide Medicaid services[-]; or

(w)23) [F]fail[ure] to repay or make arrangements for[-the] repayment of any identified Medicaid overpayments, or otherwise erroneous payments, as required by the State Plan, court order, or formal administrative hearing decision.

R414-22-4. Sanctions.

~~[5. Sanctions~~

~~The following sanctions may be invoked against providers based on the grounds specified in subsection 4, above: Sanctions for violating any subsection of R414-22-3 are:~~

~~(a)1) Termination from participation in the Medicaid program; or~~

~~(b)2) Suspension of participation in the Medicaid program[.];~~

R414-22-5. Imposition of Sanction.

~~[6. Imposition and Extent of Sanction~~

~~(a) Imposition of Sanction~~

~~(1) Before a decision is made by DHCF whether to impose a sanction on a provider, the provider will be notified in writing of the findings of any investigation by DHCF, its agents, or the Bureau of Medicaid Fraud, and any possible sanctions that might be imposed. A provider will have 30 days following the date of the notice to respond in writing to the findings of any investigation. Additional time not to exceed 30 days may be granted by DHCF upon written request for cause shown.~~

~~(2) The decision as to the appropriate sanction to be imposed shall be at the discretion of DHCF after input has been received from the provider on the results of the investigation.~~

~~(3) The following factors shall be considered in determining what sanction, if any, should be imposed: (1) Before the Department decides to impose a sanction, it shall notify the provider, in writing, of:~~

~~(a) the findings of any investigation by the Department, its agents, or the Bureau of Medicaid Fraud; and~~

~~(b) any possible sanctions the Department may impose.~~

~~(2) Providers shall have 30 days after the notice date to respond in writing to the findings of any investigation. A written request for additional time of less than 30 days may be granted by the Department for good cause shown.~~

~~(3) The Department has the discretion to impose sanctions after receiving the provider's input.~~

~~(4) The Department may consider the following factors when determining which sanction to impose:~~

~~(a) [S]eriousness of offense(s);~~

~~(b) [E]xtent of offense(s);~~

~~(c) [H]istory of prior violations of Medicaid or Medicare law;~~

(d) ~~[P]~~prior imposition of sanctions by the Department~~[DHCF];~~

(e) ~~[E]~~extent of prior notice, education, or warning given~~[supplied]~~ to the provider by the Department~~[DHCF]~~ pertaining to the offense(s) for which the provider is being considered for sanction;

(f) ~~[A]~~adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense(s);

(g) ~~[W]~~whether a lesser sanction will be sufficient to remedy the problem;

(h) ~~[S]~~sanctions imposed by Licensing Boards or peer review groups and professional health care associations pertaining to the offenses~~[-]; and~~

(i) ~~[S]~~suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing these~~[such]~~ programs.

~~[(4) Where a provider has been convicted of defrauding the Medicaid program, or has been terminated or suspended from the Medicare program for abuse, DHCF must institute proceedings to terminate or suspend the provider from the Medicaid program (See Subsection 7 below).]~~(5) When the Department decides to impose a sanction, it shall notify the provider at least ten calendar days before the sanction's effective date.

R414-22-6. Scope of Sanction.

~~[(b) Scope of Sanction~~

~~— (1) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, partnership, corporation or other similar organization, to DHCF or its fiscal agents for any services or supplies provided under the Medicaid program, except for those services or supplies provided prior to the suspension or termination.~~

~~— (2) When the provisions of Subsection b(1) are violated by a provider of services which is a clinic, group, corporation or other similar organization, the DHCF may, in accordance with Section 4c, suspend or terminate such organization and/or any individual person within said organization who is responsible for such violation.~~

~~— (c) Provider Notified of Sanction~~

~~— If DHCF determines that a sanction should be imposed, the provider will be notified by letter from DHCF of the sanction at least 10 calendar days before the sanction becomes effective in accordance with the notice provisions of the Department of Health Administrative Hearing Procedures for Medicaid set forth in the Provider Manual in Volume I (Administration) Section E.](1) Once a provider is suspended or terminated, the Department shall only pay claims for services provided prior to the suspension or termination.~~

(2) The Department may suspend or terminate any individual, clinic, group, corporation, or other similar organization, who allows a sanctioned provider to bill Medicaid under the clinic, group, corporation or organization provider number.

~~— 7. Mandatory Suspension or Termination From Medicaid~~

~~— DHCF must suspend or terminate from Medicaid participation any medical practitioner or other health care professional licensed under State law who is convicted of Medicaid or Medicare related crime(s) in either a federal or state court.~~

~~— When a practitioner or other health care professional is convicted and sentenced in a State court of Medicaid-related crime(s), DHCF will promptly notify the Department of Health and Human Services, Regional Sanctions Coordinator, and provide the following information within 15 days after sentencing:~~

~~— (a) Name and address of the practitioner;~~

~~— (b) Date of conviction;~~

~~— (c) Statute(s) violated and number of counts;~~

~~— (d) A copy of the indictment;~~

~~— (e) A copy of the plea agreement (if applicable) and the judgment, conviction, or probation order;~~

~~— (f) Current address of the practitioner (if the practitioner is incarcerated, provide the name and address of the penal institution); and~~

~~— (g) Name and address of the Director of the State local licensing authority.~~

~~— 8. Waiver of Mandatory Suspension or Termination~~

~~— (a) If mandatory suspension or termination of the practitioner is expected to have a substantial negative impact on the availability of medical care in a community or area, DHCF may request a waiver of mandatory suspension or termination by submitting to the Health Care Financing Administration a request for waiver which contains a brief statement outlining the problem.~~

~~— (b) The Health Care Financing Administration will notify DHCF if and when it waives the suspension or termination in response to a request of DHCF. This should occur only if the Secretary of the Department of Health and Human Services has designated a health manpower shortage area, and an insufficient number of National Health Service Corps personnel have been assigned to meet the needs of that area.]~~

R414-22-7. Notice of Sanction.

~~[(9. Notice of Sanction~~

~~— (a) When a provider has been sanctioned for a period exceeding 15 days pursuant to these Administrative Sanction Procedures and Regulations, the DHCF shall notify as appropriate the applicable professional society, Board of Registration or Licensure, and Federal or State agencies of the findings made and the sanctions imposed.~~

~~— (b) DHCF will notify any appropriate Medicaid recipients, in a timely manner, that the provider has been suspended or terminated from the Medicaid program.](1) When a provider has been sanctioned for a period exceeding 15 days, the Department may notify the applicable professional society, board of registration or licensor, and federal or state agencies.~~

~~(2) Notice includes:~~

~~(a) the findings made; and~~

~~(b) the sanctions imposed.~~

~~(3) The Department shall timely notify any appropriate Medicaid recipients of the provider's suspension or termination from the Medicaid program.~~

R414-22-8. Provider Application.

~~[(10. Provider Application~~

~~— Any application for a Medicaid provider agreement which is submitted to DHCF will be fully evaluated with a review made of any sanction case files that may have existed in the past, before the provider agreement will be approved by DHCF.][The Department~~

shall review any Medicaid provider agreement application for previous sanctions before approving the provider agreement.

KEY: medicaid
[1987]1998 26-1-5
Notice of Continuation 1992

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Rod L. Betit, Executive Director

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-30
Bureau of Facility Management Policy
and Procedures Manual Part B,
Hospital Preadmission and Continued
Stay Review

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 20655
FILED: 01/13/98, 15:15
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This rule is out-of-date and redundant, being a duplicate of Rule R414-36. The information in both of these rules appears in Rule R414-31X. (DAR Note: R414-36 is also proposed as a repeal under DAR No. 20656 in this *Bulletin*.)

SUMMARY: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None.
❖ LOCAL GOVERNMENTS: None.
❖ OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 142906
Salt Lake City, UT 84114-2906, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Urla Jeane Maxfield at the above address, by phone at (801) 538-9144, by FAX at (801) 538-6099, or by Internet E-mail at umaxfiel@email.state.ut.us.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

~~[R414-30. Bureau Of Facility Management Policy And Procedures Manual Part B, Hospital Preadmission And Continued Stay Review.~~

~~**R414-30-1:**~~

- ~~1. Purpose Statement~~
- ~~The purpose of the Hospital Preadmission and Continued Stay Review programs set forth herein are to enable the Division of Health Care Financing (Division):~~
 - ~~(a) to identify, statewide, the medical need of Title XIX applicants/recipients who are patients of hospitals or desire to be admitted to hospitals in order to receive the appropriate type of treatment, care, and services for injury, illness, disability, or diagnostic evaluation;~~
 - ~~(b) to assure quality of care/services while safeguarding against over or underutilization of services and costs; and~~
 - ~~(c) to ensure that approval for admission to and continued stay in a hospital is given prior to reimbursement by the State Medicaid Agency or by a waived physician.~~
 - ~~(d) to assure, through review by qualified medical professionals licensed in the healing arts, that the acute care inpatient hospital services provided to Title XIX applicants/recipients will prolong life, relieve stress, restore function and prevent disability.~~
- ~~Approval by the Division of Health Care Financing for hospital services for a Medicaid applicant/recipient is given only after professional analysis of alternative resources and settings of treatment, care, and services appropriate to the total needs of the patient have been evaluated. Alternatives to hospital care may include, but are not necessarily limited to, the following community resources individually or in combination:~~
 - ~~(a) Outpatient surgery or freestanding surgical center~~
 - ~~(b) Outpatient diagnostic tests and radiology~~
 - ~~(c) Birthing Center~~
 - ~~(d) Physician treatment or surgery in office~~
 - ~~(e) Skilled Nursing Facility/Rehabilitative Care~~
 - ~~(f) Skilled Nursing Facility~~
 - ~~(g) Intermediate Care Facility~~
 - ~~(h) Family~~
 - ~~(i) Home Health Agency~~
 - ~~(j) Hospice~~
 - ~~(k) Homemaking Services~~
 - ~~(l) Diet and Nutrition~~
 - ~~(m) Socialization~~
 - ~~(n) Recreation~~
 - ~~(o) Physical Therapy~~
 - ~~(p) Speech Rehabilitation~~
 - ~~(q) Transportation~~
 - ~~(r) Economic Assistance~~

- (s) Legal Assistance
- (t) Counseling
- (u) Mental Health Services
- (v) Social Support Services
- (w) Housing Assistance
- (x) Handicapped Services
- (y) Services provided when applicable under Titles III, IV, VI, XVIII, and XX.

— The decision to deny or grant preadmission or continued stay is an exercise of professional judgment, utilizing written criteria applied by qualified professionals licensed in the healing arts.

— Division of Health Care Financing (hereafter "Division") staff will be available during regular business hours to assist applicants/recipients, physicians, and hospital providers, either by telephone or personal appointment upon request, in complying with the requirements of this program.

— 2. Authority

— The authority for the evaluation of each applicant's or recipient's need for admission and continued stay in the hospital (includes both acute care and chronic disease) is defined in the Utah State Plan Attachment 3.1-A (Amount, Duration and Scope of Medical and Remedial Care and Services Provided, Inpatient Hospital Services) and in 42 CFR 456.128 through 456.137, Review of Need for Continued Stay.

— The Division, in order to meet the requirements of the above regulations, has assigned the Bureau of Facility Management, Patient Assessment Section (Section) the authority to determine the need for admission to acute care hospitals or to chronic disease hospitals:

— The Section may waive this authority by granting to physicians a waiver of preadmission requirements in accordance with policy and procedures set forth below. Authority to determine need for continued stay has been assigned to the Section. The Section has developed policies, procedures and medical criteria that will ensure each applicant or recipient is assessed prior to placement and/or reimbursement, and to determine the duration of stay based upon continued stay review. These actions will safeguard against unnecessary or inappropriate use of Medicaid services and/or payment, while assuring the quality of care/services:

— Under waiver granted to the Division effective October 1, 1982 these policies and procedures are designed to meet the intent of and are in lieu of all waivable utilization review requirements of 42 CFR Part 456, Subpart C. Medical Care Evaluation Studies required under 42 CFR 456.41 - 45 are covered under policies and procedures for Surveillance and Utilization Review/Medical Care Evaluation Studies in the Bureau of Facility Management, Policy and Procedures Manual, Part C.

— These policies and procedures also specify the manner in which physician certification and recertification requirements will be met in accordance with 42 CFR 456.60:

— The provisions of the Hospital Preadmission and Continued Stay Programs shall be governed by the Social Security Act, the laws of the State of Utah, under authority as granted by regulation as set forth in the 42 Code of Federal Regulations and Title XIX State Plan with which the Division ensures compliance:

— The Division by this rulemaking adopts the AMA Short Stay Criteria, The Concurrent Review Screening Criteria for Hospital Admission and Assignment of Length of Stay, 2nd Edition using ICF-9-CM and the Appropriateness Evaluation Protocol, to assess

the need for admission and continued stay. The above criteria have been developed and adopted by physicians.

— 3. AVAILABILITY

— (a) Preadmission Assessment Evaluation and prior approval is required for recipients of Title XIX (Medicaid) and applicants for Title XIX (Medicaid) who are pending eligibility determination:

— (b) Preadmission Assessment Evaluation is required for the following persons, if application for Title XIX (Medicaid) is anticipated within 90 days:

— (1) Persons who are in a hospital, and currently funded from other sources including, but not limited to, Medicare, Veteran's Administration, and private pay.

— (2) Persons who have been referred by a Mental Health Center or have a civil commitment to the Mental Health System or to a hospital:

— Failure by these persons to complete hospital preadmission requirements as specified in this policy will result in non-coverage of hospital care retroactive to eligibility application.

— 4. SAFEGUARDING OF CLIENT INFORMATION:

— (a) The use or dissemination of any information concerning an applicant/recipient for any purpose not directly connected with the administration of the Medicaid Program is prohibited except on written consent of the applicant/recipient, his/her attorney, or his/her responsible parent or guardian. (42 CFR 431 Subpart F)

— (b) Providers are responsible to ensure that information on patients who are not applicants for or recipients of Medicaid is not released without permission of the patient or guardian.

— 5. FREE CHOICE OF PROVIDERS:

— A recipient may request service from any certified hospital provider subject to 42 CFR 431.51:

— A recipient who believes that his/her freedom of choice of provider has been denied or impaired may request a fair hearing pursuant to 42 CFR 431.200:

— A recipient's participation in the Medicaid program does not preclude the recipient's rights to seek and pay for services not covered by Medicaid.

— 6. POLICY: GENERAL PROGRAM POLICY:

— (a) The Patient Assessment Section (Section) will utilize as necessary professional consultants with expertise in the various branches of medicine, surgery, psychiatry, psychology, physical therapy, social services, occupational therapy, and mental retardation:

— These consultants together with selected personnel from the Section will constitute the Utilization Review Committee:

— (b) Utilization Review Committee meetings shall be held in order to process applications for which an individual health professional desires additional professional consultation. The Utilization Review Committee is chaired by the physician consultant and is comprised of additional health professionals as needed. Determinations made in the committee meetings shall be documented on the Committee Action Report Form:

— (c) The Section will make determinations via telephone daily from 8:00 a.m. - 5:00 p.m. except weekends and holidays. The section manager may make appropriate administrative adjustments to section processing requirements to cover medical emergencies occurring during uncovered times:

— If the patient only has partial coverage from other financial sources, and can demonstrate that the admission was necessary and the least cost alternative to meet the identified medical need, the

Section may authorize reimbursement for the services provided retroactive to the date of eligibility determination:

—(d) Physicians should consult with the Patient Assessment Section during regular working hours. If a medical emergency occurs during an uncovered time, the physician shall contact the Patient Assessment Section as soon as reasonably possible during the next working day.

—(e) The Section will gather and utilize data to develop and improve services in the Department of Health, to the provider, to the patient/resident, and the community through alternative resources.

—(f) The Section will maintain records of all preadmission assessments, approvals, deferrals of action, referrals to other agencies, denials, changes in reimbursement status, follow-up reports, or any other materials pertinent to the program.

—(g) The applicant/recipient or patient/resident shall have the right of appeal of adverse decisions in accordance with Division Hearing Policies.

—(h) Supplemental On-site Review (SOR) will be performed by a health professional from the Section at the Section's discretion when a question of appropriateness of admission or continued stay cannot be resolved by telephone or written documentation. The Section will also complete a Supplemental On-site Review on written or telephone request of the Medicaid patient/resident, guardian, or physician in the case of an adverse action.

—(i) The Division will refer any willful misrepresentation of information to the Bureau of Program Review and the Office of Program Integrity for investigation and appropriate action.

—(j) The Division will provide orientation and in-service to all hospitals, physicians, and related health agencies regarding the Hospital Preadmission and Continued Stay Review Programs and criteria for admission and continued stay.

7. UTILIZATION REVIEW POLICY: ADMISSION REVIEW:

—(a) Authorization for admission or receiving an inter-facility transfer as related to hospital reimbursement for the Medicaid applicant/recipient, shall be the express authority of the Division.

—(b) With the exception of scheduled admissions for patient observation, diagnostic testing, evaluation, and screening, the authority for admission authorization may be waived to certain physicians, see Paragraph (j) below.

—(c) The Section must evaluate each patient being admitted for observation, diagnostic testing, evaluation, and screening prior to admission in accordance with the criteria specified under Section 2, Authority:

—(d) All scheduled admissions by physicians without a waiver shall have written preadmission assessment evaluation and prior approval prior to admission:

—(e) Emergency admissions by physicians without waiver shall have telephone authorization for continued stay during the first Division workday following admission in accordance with Section 7, Utilization Review: Continued Stay Review:

—(f) Patients who leave the hospital against medical advice, or who fail to return after an authorized leave of absence, will be considered discharged from the Hospital and must complete all requirements before admission or readmission into the program. Providers are responsible to report all such instances:

—(g) It is the responsibility of the attending/admitting physician, or other physician involved in the primary care of the patient, to

complete the request for prior approval for admission. Failure to complete this form shall result in loss of Medicaid reimbursement for all services rendered while the patient is hospitalized. Services not reimbursed by reason of failure to complete this form in a timely manner shall not be chargeable to the Medicaid patient. Timely completion of this form is as follows:

—(1) For all non-emergency admissions, by non-waivered physicians, the form must be completed prior to admission, approved by the Division, and a copy of the approval provided to the hospital on admission:

—(2) For all procedures requiring prior approval, approval must be obtained from the Division, by both waived and non-waivered physicians, prior to admission of the patient. A copy of the approval is to be submitted to the hospital on admission of the patient:

—(3) For all emergency admissions, and for physicians waived under paragraph I below, no physician form is required. The hospital shall mail or otherwise transmit a copy of the admission form within 24-hours of admission:

—(4) For all admissions for patient observation, diagnostic testing, evaluation, and screening, authorization must be given by the Section prior to admission:

—(h) Physicians shall make explicit predictions of patient outcomes known to be attainable if and when the process of care is optimal. The physician shall recommend this length of stay on the request for prior approval:

—(i) A waiver of preadmission requirements shall be granted to all physicians licensed in Utah State upon enrollment with the Medicaid program. This waiver shall remain in effect until revoked by the Division with at least ten (10) days advance notice. Admission by a waived physician shall be deemed to meet all preadmission requirements of Section 3 above. The waiver of preadmission requirements does not include any procedures which have been designated as requiring prior approval:

—(j) The decision to withdraw or to revoke the waiver status of a physician shall be made only by the Medical Advisors on the Utilization Review Committee. The withdrawal or revocation of a physician waiver of preadmission requirements shall be for a period of one year and shall be based upon the following criteria:

—(1) Over five (5) percent of hospital admissions in six consecutive months exceed the PAS Regional 50th percentile length of stay for diagnosis/surgical procedure or the appropriate length of stay as determined by the Patient Assessment Section, whichever is greater:

—(2) Over five (5) percent of hospital admissions in six consecutive months could have appropriately been treated through alternative, less costly services as determined by the Patient Assessment Section:

—(3) Admission of any patient on a non-emergency basis for a surgical procedure that requires prior approval without having received prior approval from the Division for that procedure:

—(4) Emergency admission of any patient for a non-emergency condition or treatment:

—Physicians may appeal a revocation of waiver to the Section's Utilization Review Committee based upon issues of fact regarding patients treated during the six month period:

—(k) The Division will automatically approve any valid application for admission approval that is not acted upon by the Division within 30 calendar days of receipt.

— (t) The Section will refer medically ineligible applicants/recipients to appropriate alternative resources for care treatment and services when the professional assessment identifies such a need. Referrals may be made to other agencies and institutions serving or meeting needs associated with alcohol and drugs, crippled children, DD/MR, mental health, etc., such as the Utah State Hospital and Mental Health Centers. Persons presently in the jurisdiction of an adult or juvenile court are not eligible for Medicaid benefits until released by the court. This includes persons who are incarcerated or in detention status.

— 8. UTILIZATION REVIEW POLICY: CONTINUED STAY REVIEW:

— (a) When a person is admitted to the acute care hospital under the admission review requirements of Section 7, the Section assigns a date by which the patient will be discharged or the need for acute care continued stay will be reviewed.

— The Section will give the acute care hospital the predicted date of continued stay review. The hospital must retain the notification of the continued stay review in the patient's medical record. (See Section 10)

— (b) The assignment of the initial continued stay review date will be based on:

— (1) the methods and criteria described under Section 8, Paragraph c;

— (2) the individual's condition; and

— (3) the individual's discharge date as predicted by the attending physician.

— (c) The Section uses regional and state medical care appraisal norms, including the Length of Stay in PAS Hospitals, most current edition, and statistical information available through the Utah State Surveillance and Utilization Review Subsystem, to assign the initial continued stay review date.

— These norms are based on current and statistically valid data on duration of stay in hospitals for patients whose characteristics, such as age, sex and diagnosis, are similar to those of the individual whose case is being reviewed.

— The number of days between the individual's admission and the initial continued stay review date is not greater than the number of days reflected in the 50th percentile of the norms. However, the committee may assign a later review date if it documents that the later date is more appropriate and the Committee ensures that the initial continued stay review date is recorded in the Section's records.

— (d) The Section will modify the initial continued stay review date upon receipt of information in writing or by telephone from the attending physician (M.D. or D.O.) or other physician (M.D. or D.O.) involved in the care and treatment of the patient when the patient's condition or treatment schedule changes. The Committee will only accept medical information relating the change in the patient's condition from a licensed physician (M.D. or D.O.). Only a physician, physician consultant or a registered nurse assigned to the Bureau of Facility Management may receive medical information by telephone relating to a change in the patient's condition.

— (e) The Section has the authority to review each patient's continued stay in the acute care hospital to decide whether it is needed in accordance with the following policies and the outcome predictions and in accordance with the criteria adopted under Section 2, Authority:

— (f) The Committee will use data generated by the Surveillance and Utilization Review Subsystem to select categories that will receive close professional scrutiny:

— (g) The Section has the authority to develop more extensive criteria for cases that its experience shows are:

— (1) Associated with high costs;

— (2) Associated with the frequent furnishing of excessive services; or

— (3) Attended by physicians whose pattern of care are frequently not in accordance with local practice patterns.

— (h) The Section assigns subsequent extension of continued stay review dates in accordance with Section 8, Paragraphs b, c, and d:

— The Section assigns a subsequent review date each time it decides under Section 8, Paragraph (i), that the continued stay is needed:

— The Section ensures that each continued stay review date it assigns is recorded and available in the Section's records for each patient in accordance with criteria adopted in Section 2, Authority:

— (i) Review of continued stay cases is conducted by:

— (1) A Section nurse evaluator;

— (2) A consultant physician advisor;

— (3) The Utilization Review Committee.

— The persons indicated above, review a patient's continued stay on or before the expiration of each assigned continued stay review date:

— For each continued stay of a patient in the acute care hospital, the Committee, subgroup or designee reviews and evaluates the documentation against the specified criteria and applies close professional scrutiny to cases selected under Section 8, Paragraph (f):

— (j) If the Section finds that a patient's continued stay in the acute care hospital is justified, the Section reassigns a new continued stay review date or extends the continued stay review date in accordance with these policies and procedures:

— (k) If the Section finds that a continued stay case does not meet the criteria, the Utilization Review Committee, including at least one physician advisor, reviews the case to determine the appropriateness of the need for continued stay:

— If the Utilization Review Committee making the review under Paragraph k of this section finds that a continued stay is not needed the Committee notifies the patient's attending physician and gives him/her an opportunity to present additional medical information before it makes a final decision on the need for continued stay.

— If the attending physician does not present additional information or clarification of the need for the continued stay, the decision of the Utilization Review Committee is final.

— If the attending physician presents additional information or clarification, the Utilization Review Committee including at least two physician advisors review the need for continued stay. If they find that the patient no longer needs inpatient acute care hospital services, their decision is final.

— (l) The Section must provide written notice of any adverse final decision on the need for continued stay to:

— (a) The hospital administrator or business manager on the administrator's written request;

— (b) The attending physician;

— (c) The Medicaid agency;

— (d) The patient; and

— (c) If possible, the next of kin or sponsor.
 — The Section may also provide telephone notice followed by written notice to any or all of the individuals listed above.
 — (m) The Section makes a final decision on a patient's need for continued stay and gives notice under Section 8, Paragraph (l) of an adverse final decision within two working days after the assigned continued stay review dates, except as required under Paragraph (n) of this Section.
 — (n) An adverse action can also be made prior to the assigned date of continued stay review. If the Utilization Review Committee or physician advisor makes an adverse final decision on a patient's need for continued stay before the assigned review date, the Section gives notice within two working days after the date of the final decision as described above.
 — Advance notice of termination of acute care hospital care is not required if a change in level of medical care is prescribed by the patient's physician.
 — 9. POLICY: UTILIZATION CONTROL:
 — (a) Medicaid Program participation requires compliance with the Utilization Control regulations found in 42 Code of Federal Regulations Part 456, Subpart C - Inpatient Hospitals. The three primary Utilization Control areas are:
 — 1) Physician certification and recertification of need for inpatient care (42 CFR 456.60);
 — 2) Individual written plan of care (42 CFR 456.80), and
 — 3) Utilization review (42 CFR 456.100 through 42 CFR 456.145).
 — Of these three areas, only the utilization review requirements are waivable. The State of Utah has a superior system waiver for the utilization review requirements.
 — (b) Each acute care hospital must insure that physician certification and recertification requirements are met and that the individual written care plan is established and renewed as required. Failure to meet this requirement for even one patient may result in loss of federal Medicaid money. Please note that the plan of care is not required to be a single document but may be a combination of documents and other chart entries (i.e. patient medical record).
 — (c) A certification is acceptable only if it evidences the physician's determination of the need for inpatient acute care hospital services. The certification must be in writing and be signed or initialed by an individual clearly identified as a physician, i.e., M.D. or D.O. Also, effective July 1, 1981, a doctor of dental surgery or dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such function satisfies the definition of "physician".
 — (d) The certification must be dated at the time it is signed by the physician. The certification for all Medicaid (Title XIX) patients must be maintained in the patient's medical record. The certification may be given by a telephone order by the physician for an emergency admission. However, there will be no payment authorized until the telephone order is countersigned by the physician.
 — (e) Reimbursement for inpatient services will begin the date of the signed certification or the date of a telephone order that has been countersigned. Medicaid will not pay for any date of service prior to the date of the certification by signature or by telephone order.

— A suggested certification statement might be as follows:
 — I CERTIFY THAT THIS PATIENT NEEDS INPATIENT ACUTE CARE HOSPITAL SERVICES.
 — SIGNED _____ M.D. DATE _____
 — (f) These same requirements also apply to recertification, except that a physician, physician assistant or nurse practitioner acting within the scope of practice as defined by State law and under the supervision of a physician may also sign the recertification. The recertification must be made at least every 60 days after certification.
 — (g) The date and signature requirements for the plan of care are the same as for the certification and recertification.
 — (h) Pursuant to Medicaid Information Bulletin 82-61, issued December 1, 1982, beginning January 1, 1983, individual claims found not in compliance will be disallowed. The overall performance of the hospital will be assessed by State or Federal audits, based upon a statistically valid sample of all admissions. Failure to demonstrate compliance will result in a disallowance of a ratio of all monies paid. The ratio will be based upon the percentage of the sample out of compliance. Federal Audits may result in recovery of all Federal Financial Participation (FFP) paid to the hospital for the audit period.
 — In order for the State to verify that the Utilization Control requirements have been met, beginning January 1, 1983, you will be required to complete on the Inpatient Hospital Claim (Form #24-06-1) for box number 25 by checking the box either yes or no and box number 26 by writing the date the physician signed the certification/recertification. Service dates must be used on all claims. Posting dates are not acceptable. The Division will deny all claims that do not comply with this requirement.
 — 10. POLICY: HOSPITAL AND PHYSICIAN PROVIDERS:
 — A. Hospital providers accept a patient at their own risk and liability when they admit a patient on orders of a physician not waived by the Section or, for emergency admissions by a non-waived physician, fail to secure a continued stay review by the Section on the first working day following admission.
 — Hospital providers accept a patient for diagnostic testing, evaluation, and screening at their own risk and liability without obtaining authorization from the Patient Assessment Section.
 — (b) Hospital providers must report all leaves of absence on the hospital invoice.
 — (c) Hospital providers shall mail or otherwise transmit a copy of each admission form to the Division within 24 hours of admission. The forms shall be placed in specially marked envelopes and, if mailed, deposited in the post office or other US Post Office mail collection box within the 24 hour period.
 — The hospital is required to also telephone the Section to obtain the initial continued stay review date. The schedule for the assignment of the initial continued stay review date will be available.
 — (d) The hospital must complete and retain the MEDICAID CONTINUED STAY REVIEW form in the patient's medical record. The Section will assign subsequent continued stay review dates as determined appropriate by the Section. The hospital must enter all subsequent continued stay review dates on this Form. The Section will provide a supply of the forms to the hospital to meet this requirement.

Justification for an extension to the continued stay review date must be submitted by the attending physician or a medical professional designated and authorized by the physician. The justification will be reviewed by the Utilization Review Committee.

The Division will deny all claims for dates of service that exceed the assigned continued stay review date on the Inpatient Hospital Claim.

If the hospital provides services beyond the assigned review date and the physician has not requested an extension of the assigned review date, reimbursement will be denied until additional medical data is provided and has been reviewed by the Utilization Review Committee. Upon receipt of the additional medical information and if determined appropriate by the Committee, the Section may approve reimbursement for the additional dates of service.

(e) The hospital provider may not appeal a preadmission or continued stay determination; but in accordance with Division Hearing Policies, may appeal a decision denying Medicaid reimbursement to the provider for services already provided.

(f) Hospital providers must make appropriate personnel and information reasonably accessible to the Division by telephone during Division office hours.

(g) Physicians must be reasonably accessible to the Division by telephone or return calls during Division office hours. Failure to do so may result in loss of waiver status.

(h) The attending physician is responsible to initiate telephone contact with the Section for an extension of the Continued stay review date when the patient requires services beyond the assigned continued stay date.

The physician and hospital provider shall inform the Section of additional pertinent facts related to the care/service needs, diagnosis, medications, treatments, plan of care, etc., that may not have been known previous to the determination of medical need for admission and/or continued stay by the Section. The Section shall also be notified of a subsequent determination that cardiopulmonary resuscitation, renal dialysis, life support systems or other similar measures are not to be employed for a patient. The physician and hospital shall also notify the Section when the needs of a patient change so as to possibly require a change in the recommended length of stay or a different setting for services, such as a nursing care facility.

I. If the hospital and physician elect to provide services beyond the continued stay review date without requesting and receiving an authorization for an extension to the assigned dates, they cannot seek payment from the recipients for medical services rendered when not reimbursed by the Medicaid agency except as provided below.

A recipient may in certain circumstances be billed by the provider for non-covered services such as more expensive eye glass frames, hearing aids, etc. However, the recipient must be advised prior to receiving a non-covered service, that it is not covered by Medicaid, and that the recipient will be personally responsible for making payment. The Division of Health Care Financing will reimburse the covered portion and the recipient may be billed for the portion not covered. However, there must be an agreement in writing between the provider and the recipient regarding the provider billing the recipient. Without that written agreement, the provider must not bill the recipient regardless of whether or not the provider chooses to bill the Division of Health Care Financing. The

recipient's ID card cannot be "held" by the provider as guarantee of payment by the recipient.

Except as provided in the preceding paragraph, no claim for payment will be made at any time by a provider to a Title XIX recipient accepted by that provider as a Medicaid recipient for any Title XIX covered service. When the provider accepts a Medicaid recipient as a recipient, he/she must look solely to the Division of Health Care Financing for reimbursement.

11. POLICY: DISCHARGE PLANNING:

(a) The Patient Assessment Section's Utilization Review Committee will review each patient's discharge plan. When the status of the patient is changed by State action, the Committee will ensure that the patient has a planned program of post discharge care that takes his/her care/service needs into account.

When the Division initiates a discharge action, the Section social worker will contact the Provider and/or the Discharge Planning Coordinator to coordinate the implementation of the discharge plan to ensure that post discharge needs are met.

In hospitals certified to participate as swing-bed providers, when Title XIX (Medicaid) reimbursement is available for the patient at a different level of care within the same facility, the discharge plan may be reevaluated, but it is not required that the Section social worker contact the Provider or the Discharge Planning Coordinator as required above.

(b) Discharge may be effected by the physician at any time without Division approval.

Appropriateness Evaluation Protocol

Summary Description

The Patient Assessment Section's Reviewers are required to make two appropriateness judgments based on information in the patient's medical record: Appropriateness of the admission and of a specified day of care within the hospital stay. Therefore, there are two major categories of criteria - admission criteria and day of care criteria. The former consist of eighteen items grouped into two subsets (Severity of Illness and Intensity of Service) and latter consist of twenty-seven items divided into three subsets (medical services, nursing/life support services, and patient condition factors). If any single admission criterion is met in either subset and is documented in the patient's chart, the admission is considered appropriate. Similarly, if any single day of care criterion is met in any one of the three subsets, the specified day of care is appropriate.

The purpose of the override option (located at the end of the admission day criteria and the day of care criteria) is to allow the reviewer either to indicate that the criteria set is not sufficiently comprehensive, because some service or factor necessitating admission and hospitalization had occurred or, conversely, to judge that a patient meeting one of the criteria, nevertheless, did not need acute level hospitalization, because the service which met the criteria was not justified on clinical grounds. Only when there is an "overriding" circumstance of clinical significance that justifies changing the appropriateness conclusion of the objective criteria should the option be utilized.

The Utilization Review Committee shall have the authority to develop and maintain a list of patient conditions and/or services that would provide a guideline for use of the override option.

I. CRITERIA OF ADMISSION APPROPRIATENESS (Form):

A. Severity of Illness Criteria

B. Intensity of Service

~~— H. CRITERIA OF APPROPRIATENESS (Form):~~
~~— A. Medical Services~~
~~— B. Nursing/Life Support Services (alternative placement must be considered)~~
~~— III. CERTIFICATION AND RECERTIFICATION OF NEED FOR INPATIENT CARE~~
~~— A. Certification:~~
~~— (1) A physician must certify for each applicant or recipient that inpatient services in a hospital are or were needed:~~
~~— (2) The certification must be made at the time of admission or, if an individual applies for assistance while in a hospital, before the Medicaid agency authorizes payment.~~
~~— B. Recertification:~~
~~— (1) A physician, or physician assistant or nurse practitioner (as defined in paragraph 481.2 of this chapter) acting within the scope of practice as defined by State law and under the supervision of a physician, must recertify for each applicant or recipient that inpatient services in a hospital are needed:~~
~~— (2) Recertifications must be made at least every 60 days after certification.~~
~~— 42 CODE OF FEDERAL REGULATIONS 456.80~~
~~— INDIVIDUAL WRITTEN PLAN OF CARE~~
~~— (a) Before admission to a hospital or before authorization for payment, a physician and other personnel involved in the care of the individual must establish a written plan of care for each applicant or recipient:~~
~~— (b) The plan of care must include =~~
~~— (1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;~~
~~— (2) A description of the functional level of the individual;~~
~~— (3) Any order for =~~
~~— (i) Medications;~~
~~— (ii) Treatments;~~
~~— (iii) Restorative and rehabilitative services;~~
~~— (iv) Activities;~~
~~— (v) Social services;~~
~~— (vi) Diet;~~
~~— (4) Plans for continuing care, as appropriate; and~~
~~— (5) Plans for discharge, as appropriate.~~
~~— (c) Orders and activities must be developed in accordance with physician's instructions:~~
~~— (d) Orders and activities must be reviewed and revised as appropriate by all personnel involved in the care of an individual:~~
~~— (e) A physician and other personnel involved in the recipient's case must review each plan of care at least every 60 days.~~

~~KEY: medicaid~~
~~1987~~ ~~26-1-5~~
~~Notice of Continuation 1992]~~



Health, Health Care Financing,
 Coverage and Reimbursement Policy
R414-36
 Bureau of Facility Management Policy
 and Procedures Manual

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 20656
 FILED: 01/13/98, 15:15
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This rule is out of date and redundant, being a duplicate of Rule R414-30. The information in both these rules appears in Rule R414-31X. (**DAR Note:** R414-30 is also proposed as a repeal under DAR No. 20655 in this *Bulletin*.)

SUMMARY: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:
 ❖THE STATE BUDGET: None.
 ❖LOCAL GOVERNMENTS: None.
 ❖OTHER PERSONS: None.
 COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 Health
 Health Care Financing,
 Coverage and Reimbursement Policy
 Cannon Health Building
 288 North 1460 West
 Box 142906
 Salt Lake City, UT 84114-2906, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
 Urla Jeane Maxfield at the above address, by phone at (801) 538-9144, by FAX at (801) 538-6099, or by Internet E-mail at umaxfiel@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

~~[R414-36. Bureau of Facility Management Policy and Procedures Manual.~~

R414-36-1. Part B, Hospital Preadmission and Continued Stay Review.

~~1. Purpose Statement~~

~~The purpose of the Hospital Preadmission and Continued Stay Review programs set forth herein are to enable the Division of Health Care Financing (Division):~~

~~(a) to identify, statewide, the medical need of Title XIX applicants/recipients who are patients of hospitals or desire to be admitted to hospitals in order to receive the appropriate type of treatment, care, and services for injury, illness, disability, or diagnostic evaluation;~~

~~(b) to assure quality of care/services while safeguarding against over or underutilization of services and costs; and~~

~~(c) to ensure that approval for admission to and continued stay in a hospital is given prior to reimbursement by the State Medicaid Agency or by a waived physician.~~

~~Approval by the Division of Health Care Financing for hospital services for a Medicaid applicant/recipient is given only after professional analysis of alternative resources and settings of treatment, care, and services appropriate to the total needs of the patient have been evaluated. Alternatives to hospital care may include, but are not necessarily limited to, the following community resources individually or in combination:~~

~~(1) Outpatient surgery or freestanding surgical center~~

~~(2) Outpatient diagnostic tests and radiology~~

~~(3) Birthing Center~~

~~(4) Physician treatment or surgery in office~~

~~(5) Skilled Nursing Facility/Rehabilitative Care~~

~~(6) Skilled Nursing Facility~~

~~(7) Intermediate Care Facility~~

~~(8) Family~~

~~(9) Home Health Agency~~

~~(10) Hospice~~

~~(11) Homemaking Services~~

~~(12) Diet and Nutrition~~

~~(13) Socialization~~

~~(14) Recreation~~

~~(15) Physical Therapy~~

~~(16) Speech Rehabilitation~~

~~(17) Transportation~~

~~(18) Economic Assistance~~

~~(19) Legal Assistance~~

~~(20) Counseling~~

~~(21) Mental Health Services~~

~~(22) Social Support Services~~

~~(23) Housing Assistance~~

~~(24) Handicapped Services~~

~~(25) Services provided when applicable under Titles III, IV, VI, XVIII, and XX.~~

~~The decision to deny or grant preadmission or continued stay is an exercise of professional judgment, utilizing written criteria applied by qualified professionals licensed in the healing arts.~~

~~Division of Health Care Financing (hereafter "Division") staff will be available during regular business hours to assist applicants/recipients, physicians, and hospital providers, either by telephone or personal appointment upon request, in complying with the requirements of this program.~~

~~2. Authority~~

~~The authority for the evaluation of each applicant's or recipient's need for admission and continued stay in the hospital is defined in the Utah State Plan Attachment 3.1-A (Amount, Duration and Scope of Medical and Remedial Care and Services Provided; Inpatient Hospital Services) and in 42 CFR 456.128 through 456.137, Review of Need for Continued Stay. The Division, in order to meet the requirements of the above regulations, has assigned the authority to determine the need for admission to the Patient Assessment Section (Section), Bureau of Facility Management and has waived this authority as pertains to hospital admissions to physicians by granting a waiver of preadmission requirements by the Section in accordance with policy and procedures set forth below. Authority to determine need for continued stay has been assigned to the Section. The Section has developed policies, procedures and medical criteria that will ensure each applicant or recipient is assessed prior to placement and/or reimbursement, and to determine the duration of stay based upon continued stay review. These actions will safeguard against unnecessary or inappropriate use of Medicaid services and/or payment, while assuring the quality of care/services.~~

~~Under application for waiver to the Division effective April 1, 1982 these policies and procedures are designed to meet the intent of and are in lieu of all waiverable utilization review requirements of 42 CFR Part 456, Subpart C. Medical Care Evaluation Studies required under 42 CFR 456.41 - 45 are covered under policies and procedures for Surveillance and Utilization Review/Medical Care Evaluation Studies in the Bureau of Facility Management, Policy and Procedures Manual, Part C.~~

~~These policies and procedures also specify the manner in which physician certification and recertification requirements will be met in accordance with 42 CFR 456.60.~~

~~The provisions of the Hospital Preadmission and Continued Stay Programs shall be governed by the Social Security Act, the laws of the State of Utah, under authority as granted by regulation as set forth in the 42 Code of Federal Regulations and Title XIX State Plan with which the Division ensures compliance.~~

~~3. Availability~~

~~(a) Preadmission Assessment Evaluation and prior approval is required for recipients of Title XIX (Medicaid) and applicants for Title XIX (Medicaid) who are pending eligibility determination.~~

~~(b) Preadmission Assessment Evaluation is required for the following persons, if application for Title XIX (Medicaid) is anticipated within 90 days:~~

~~(1) Persons who are in a hospital, and currently funded from other sources including, but not limited to, Medicare, Veteran's Administration, and private pay.~~

~~(2) Persons who have been referred by a Mental Health Center or have a civil commitment to the Mental Health System or to a hospital.~~

~~Failure by these persons to complete preadmission requirements will result in non-coverage of hospital care retroactive to eligibility application.~~

— The preadmission assessment is also available for any other individual who requests this service.

— 4. SAFEGUARDING OF CLIENT INFORMATION:

— (a) The use or dissemination of any information concerning an applicant/recipient for any purpose not directly connected with the administration of the Medicaid Program is prohibited except on written consent of the applicant/recipient, his/her attorney, or his/her responsible parent or guardian. (42 CFR 431 Subpart F)

— (b) Providers are responsible to ensure that information on patients who are not applicants for or recipients of Medicaid is not released without permission of the patient or guardian.

— 5. FREE CHOICE OF PROVIDERS:

— A recipient may request service from any certified hospital provider subject to 42 CFR 431.51:

— A recipient who believes that his/her freedom of choice of provider has been denied or impaired may request a fair hearing pursuant to 42 CFR 431.200:

— A recipient's participation in the Medicaid program does not preclude the recipient's rights to seek and pay for services not covered by Medicaid:

— 6. POLICY:

— The following policies apply to all Medicaid facilities and patients:

— (a) The hospital provider is responsible to secure from a physician certification of each patient's need for inpatient service prior to or at the time for admission. Telephone orders must be countersigned by the physician to fill this requirement:

— (b) Authorization for admission or receiving an inter-facility transfer as related to hospital reimbursement for the Medicaid applicant/recipient, shall be the express authority of the Division. This authority may be waived to certain physicians, see Paragraph s below. This does not preclude physicians from discharging patient/residents in accordance with certified discharge planning procedures:

— (c) All scheduled admissions by physicians without a waiver shall have written preadmission assessment evaluation and prior approval prior to admission:

— (d) Emergency admissions by physicians without waiver shall have telephone authorization for continued stay during the first Division workday following admission in accordance with procedures and time frames found in procedures section below. Written application for continued stay review and written prior authorization shall be required prior to submission of claims for services by Hospital and Physician Provider:

— (e) Hospital providers accept a patient at their own risk and liability when they admit a patient on orders of a physician not waived by the Section or, for emergency admissions by a non-waivered physician, fail to secure a continued stay review by the Section on the first working day following admission:

— (f) Authorization for placement, transfer, and discharge as related to State institution for acute care and treatment has been contracted with the State Division of Mental Health, Department of Social Services. For the procedure to follow when immediate placement to a State institution for acute care and treatment is necessary, refer to State of Utah, Division of Mental Health Bulletin #12:

— (g) The Division will maintain final authority for determination of continuing care, need, and reimbursement for title XIX patients/residents in hospitals and in State institutions:

— (h) The Division will ensure the initial and periodic comprehensive medical, social, and psychological assessments by an interdisciplinary team of health professionals and, when determined to be appropriate, facilitate discharge planning:

— (i) The Patient Assessment Section's Consultative Committee will review each patient's discharge plan. When the status of the patient is changed by State action, the Committee will ensure that the patient has a planned program of post discharge care that takes his/her care/service needs into account:

— When the Division initiates a discharge action, the Section social worker will contact the Provider and/or the Discharge Planning Coordinator to coordinate the implementation of the discharge plan to ensure that post discharge needs are met:

— In CIP hospitals and hospitals with a distinct part nursing facility, when title XIX (Medicaid) reimbursement is available for the patient at a different level of care within the same facility, the discharge plan may be reevaluated, but it is not required that the Section social worker contact the provider or the discharge planning coordinator as required above:

— (j) Patients who leave the hospital against medical advice, or who fail to return after an authorized leave of absence, will be considered discharged from the hospital and must complete all requirements before admission or readmission into the program. Providers are responsible to report all such instances:

— (k) Hospital providers must report all leaves of absence on the hospital invoice:

— (l) Consultative Committee meetings shall be held in order to process applications for which an individual health professional desires additional professional consultation. The Consultative Committee is chaired by the physician consultant and is comprised of additional health professionals as needed. Determinations made in the committee meetings shall be documented on the Committee Action Report Form:

— (m) Supplemental On-site Review (SOR) will be performed by a health professional from the Division at the Division's discretion when a question of appropriateness of admission or continued stay cannot be resolved by telephone or written documentation. The Division will also complete a Supplemental On-site Review on written or telephone request of the Medicaid patient/resident, guardian, or physician in the case of an adverse action:

— (n) It is the responsibility of the attending/admitting physician, or other physician involved in the primary care of the patient, to establish a written plan of care prior to or at the time of admission to a hospital. The plan of care must meet the requirements found in 42 CFR 465.80. The plan of care must be reviewed at least every 60 days. Each plan of care must be signed and dated by the physician:

— (o) Failure to have documentation of the approved plan of care in the hospital patient record shall result in loss of reimbursement to the hospital and physician provider for services provided during the hospital stay. Services not ordered by a physician are not reimbursable:

— (p) It is the responsibility of the attending/admitting physician, or other physician involved in the primary care of the patient, to complete the request for prior approval for admission. Failure to complete this form shall result in loss of Medicaid reimbursement for all physician services rendered while the patient is hospitalized. Services not reimbursed by reason of failure to complete this form

in a timely manner shall not be chargeable to the Medicaid patient. Timely completion of this form is as follows:

— (1) For all non-emergency admissions, by non-waivered physicians, the form must be completed prior to admission; approved by the Division, and a copy of the approval provided to the hospital on admission.

— (2) For all procedures requiring prior approval, approval must be obtained from the Division, by both waived and non-waivered physicians, prior to admission of the patient. A copy of the approval is to be submitted to the hospital on admission of the patient.

— (3) For all emergency admissions, and for physicians waived under paragraph below, no physician form is required. The hospital shall mail or otherwise transmit a copy of the admission form within 24 hours of admission.

— (q) The physician may consult with the Patient Assessment Section during regular working hours.

— (r) Physicians shall recommend a length of stay on the request for prior approval.

— (s) A waiver of preadmission requirements shall be granted to all physicians licensed in the State of Utah upon enrollment with the Medicaid program. This waiver shall remain in effect until revoked by the Division with at least ten (10) days advance notice. Admission by a waived physician shall be deemed to meet all preadmission requirements of Section 3 above.

— (t) Revocation of the waiver of preadmission requirements shall be for a period of one year and shall be based upon the following criteria:

— (1) Over five (5) percent of hospital admissions in six consecutive months exceed the PAS Regional 50th percentile length of stay for diagnosis/surgical procedure or the appropriate length of stay as determined by the Patient Assessment Section, whichever is greater, or

— (2) Over five (5) percent of hospital admissions in six consecutive months could have appropriately been treated through alternative, less costly services as determined by the Patient Assessment Section.

— (3) Admission of any patient on a non-emergency basis for a surgical procedure that requires prior approval without having received prior approval from the Division for that procedure.

— (4) Emergency admission of any patient for a non-emergency condition or treatment.

— Physicians may appeal a revocation of waiver to the Section's Consultative Committee based upon issues of fact regarding patients treated during the six month period.

— (u) Hospital providers shall mail or otherwise transmit a copy of each admission form to the Division within 24 hours of admission. The forms shall be placed in specially marked envelopes and, if mailed, deposited in the post office or other US Post Office mail collection box within the 24 hour period.

— (v) The Section shall complete admission review, length of stay review, and determination of physician waiver status on each form received.

— (w) The initial continued stay review by the Section shall take place on the first working day following receipt of the application form in the Section or the fourth day of hospitalization, whichever is the latter. All hospital stays in excess of 72 hours must be prior approved by the Section for payment. Notice of continued stay approval shall be mailed to the hospital by the Section and must

accompany the claim form when submitted to the Division for payment. Confirmation of continued stay approval will be given to the hospital, patient, next of kin, and physician by telephone on request, but telephone confirmation is not sufficient for billing purposes.

— (x) The Division will provide at a minimum weekly telephone review for determination of the need for continued hospital stay. For administrative purposes, review of continued stay will be defined as completion during the calendar week in which it is due. An alternate schedule of more frequent review may be established based upon the professional evaluation of the patient's medical need for services.

— Physicians must be reasonably accessible to the Division by telephone or return calls during Division office hours. Failure to do so may result in loss of waiver status.

— Providers must make appropriate personnel and information reasonably accessible to the Division by telephone.

— (y) Physician and Hospital providers must make contact with the Division by telephone when the needs of a patient change so as to possibly require a change in the recommended length of stay or a different setting for services, such as nursing facility care.

— The physician and hospital provider are expected to inform the Division of additional pertinent facts related to the care/service needs, diagnosis, medications, treatments, plan of care, etc., that may not have been known previous to the determination of medical need for admission and/or continued stay by the Division. The Division must also be notified of a subsequent determination that cardio-pulmonary resuscitation, renal dialysis, life support systems or other similar measures are not to be employed for a patient.

— (z) Discharge may be effected by the physician at any time without Division approval.

— (aa) The Division will refer any willful misrepresentation of information to the Bureau of Program Review and the Office of Program Integrity for investigation and appropriate action.

— (bb) The Division will automatically approve any valid application for admission or continued stay approval that is not acted upon by the Division within 30 calendar days of receipt.

— (cc) The Division will provide orientation and in-service to all hospitals, physicians, and related health agencies regarding the Preadmission and Continued Stay Review Programs.

— (dd) The Patient Assessment Section (Section) will utilize as necessary professional consultants with expertise in the various branches of medicine, surgery, psychiatry, psychology, physical therapy, social services, occupational therapy, and mental retardation.

— (ee) The Section will refer medically non-eligible applicants or ineligible applicants/recipients to appropriate alternative resources for care, treatment and services when the professional assessment identifies such a need. Referrals may be made to other agencies and institutions serving or meeting needs associated with alcohol and drugs, crippled children, DD/MR, mental health, etc., such as the Utah State Hospital and Mental Health Centers. Persons presently in the jurisdiction of an adult or juvenile court are not eligible for Medicaid reimbursement until released by the court. This includes persons who are incarcerated or in detention status.

— (ff) The Section will gather and utilize data to develop and improve services in the Department of Health, to the provider, to the patient/resident, and the community through alternative resources.

—(gg) The Section will maintain records of all preadmission assessments, approvals, deferrals of action, referrals to other agencies, denials, changes in reimbursement status, follow-up reports, or any other materials pertinent to the program.

—(hh) The Section will monitor performance of Preadmission Program policies and procedures as performed by contract agencies and agencies with Memorandums of Understanding.

—(ii) The Section will make determinations via telephone daily from 8:00 a.m. - 5:00 p.m., except weekends and holidays. The Section manager may make appropriate administrative adjustments to Section processing requirements to cover emergencies occurring during uncovered times.

—(jj) The application for admission or continued stay approval, in addition to a statement of patient condition, will constitute a transmittal from the provider to the Division for the care/services to actually be delivered to the applicant/recipient and are subject to review for admission or continued stay. Services given pursuant to a provider contract and the application must be documented to receive consideration during continued stay review, physician recertification, and for reimbursement.

—(kk) Advance notice of termination of hospital care is not required if a change in level of medical care is prescribed by the patient's physician (see 42 CFR 431.213(f)).

—(ll) Patients identified for discharge by the Section, without a change in level of medical care being prescribed by the physician, shall continue reimbursement at the current level until 10-day advance written notice can be given to the patient, the physician, the hospital provider and the next of kin, when possible (See 42 CFR 431.211 and 431.213).

—(mm) The applicant/recipient or patient/resident shall have the right of appeal of adverse decisions in accordance with Division Hearing Policies.

—(nn) The hospital provider may not appeal a preadmission or continued stay determination; but in accordance with Division hearing policies, may appeal a decision denying Medicaid reimbursement to the provider for services already provided.

KEY: medicaid
1987 **26-1-5**
Notice of Continuation 1992]



Human Services, Administration,
Administrative Services, Licensing

R501-1

General Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 20630

FILED: 01/07/98, 11:13

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This amendment is the result of recommendations received during the public comment period for the last rule changes and it includes some clean-up items.

SUMMARY: The majority of the proposed changes are rule clean up and corrections in format. The "License Violations" section has two deletions, "conviction for an illegal act," which could be interpreted as a traffic violation; and "investigations of abuse, neglect or exploitation," which is covered in another rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 62A-2-101 and 62A-2-116

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Human Services
Administration, Administrative Services,
Licensing
Room 303
120 North 200 West
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Gayle Sedgwick at the above address, by phone at (801) 538-4234, by FAX at (801) 538-4553, or by Internet E-mail at gsedgwic.adm.hs.ut.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 3/04/98

AUTHORIZED BY: Reta D. Oram, Director

R501. Human Services, Administration, Administrative Services, Licensing.

R501-1. General Provisions.

R501-1-1. Definition.

The general provisions are the procedures for the administration and issuance of a license.

A. Legal Authority

1. The Utah State Department of Human Services, hereinafter referred to as DHS, does hereby adopt and promulgate the following standards and rules governing licensure of human service programs in accordance with 62A-2-101[=] through 62A-2-116.

2. This act provides for issuance of a license by DHS~~[the Department of Human Services]~~, Office of Licensing, hereinafter referred to as Office, upon compliance with the Rules, which include General Provisions, Core, Categorical and single service Standards.

B. Purpose

1. The purpose of licensing under these rules is to authorize a public or private agency or a home to provide a defined human service program. The license designates that the program has the ability to provide the service.

2. A license indicates that the governing body of the program~~[- or a home provider]~~ has demonstrated or has provided assurance that services shall be provided in accordance with these rules.

R501-1-2. License Procedure.

A. Application

A program~~[- or provider]~~ seeking an initial or renewal license shall make application on forms provided by the Office.

B. The licensure fee, as determined by the Utah State Legislature, shall be submitted.~~[- There is no fee for foster care licensing.]~~

C. A program~~[- or provider]~~ seeking a license to provide direct service to minors or vulnerable adults shall submit identifying information to the Office for a criminal background screening in accordance with 62A-4a-413, and abuse and neglect background screening in accordance with 62A-3-311.1 and 62A-2-105,106.

D. Review

1. Each initial or renewal applicant shall permit a representative or representatives of the Office to conduct an on-site review of the physical facility, program operation, consumer records, and to interview staff and consumers to determine compliance.

2. Annually an on-site review shall be carried out by a designated representative or representatives of the Office by appointment, as pre-arranged with the program~~[- or provider or designee]~~.

3. The findings shall be shared with the program~~[- director, parent, or provider]~~ at the conclusion of the review. A written report will be filed in the Office by the representative.

4. If the report indicates non-compliance with Rules, the Office and the program~~[provider]~~ shall develop a written plan of action to achieve compliance with the Rules.

R501-1-3. Types of License.

A. Annual License

1. The Office shall issue an annual license after determination has been made that the applicant is in compliance with the Rules and Standards of the Office.

2. The license shall state name and address of the program~~[- or provider and]~~ facility, category of service, maximum consumer capacity when appropriate, and period during which license is in effect.

3. The license shall be posted in a conspicuous place on the premises.

4. A license is automatically void if there is any change in the ownership, management, or address of the program~~[- or provider]~~.

B. Renewal License

A license must be renewed annually, upon application and payment of applicable fee, providing the Office finds that the

service program and facility has complied with Rules and Standards of the Office.

C. License Extension

1. A license may be extended by the Office for a designated period of time not to exceed twelve months.

2. The Office shall state in writing the terms of the extension in a letter to the program~~[provider]~~.

D. Conditional License

1. The Office may issue a conditional license for the following:

a. a new conditional program which is temporarily unable to comply with~~[- license]~~ Rules and Standards of the Office, or

b. due cause.

2. The non-compliance or violation shall not present an immediate threat to the health or safety of the consumer.

3. The duration of the conditional license shall be determined by the Office.

4. The Office shall identify in writing the specific areas of non-compliance including a timetable for resolution.

E. Accreditation

1. The Office may accept accreditation by a nationally recognized organization, e.g., Joint Commission on~~[- or]~~ accreditation of health care organizations, Commission on Accreditation of Rehabilitation Facilities, as compliance with these Rules for licensure.

2. The standards of the reciprocal organization shall fulfill the intent of these Rules.

3. The program~~[- or provider]~~ shall request reciprocity in writing.

4. The reciprocity agreement will be formalized by written agreement, signed by the Program Director, Office Director and Division Director if appropriate~~[- and Office Director]~~.

5. The Office may conduct periodic on-site reviews and respond to any consumer complaint or concern of a program~~[- or provider]~~ licensed through reciprocity.

R501-1-4. Monitoring.

A. Office staff shall investigate reports of unlicensed ~~[providers and parents]~~ programs and attempt to license all who require a license by statute. If the program~~[individual]~~ fails to become licensed, a notice of the violation shall be referred to the Offices of the Attorney General and the appropriate County Attorney.

B. Office staff shall investigate complaints regarding a licensed program~~[- or provider]~~.

C. Unannounced visits may be conducted at any time, and if an unannounced visit indicates non-compliance or a license violation, the Office and the program~~[provider]~~ shall develop a written plan of action to achieve compliance or correct the violation. If the violation is a threat to the health or safety of consumers, a license sanction may be immediate.

R501-1-5. Corrective Action Plan for Non-Compliance With Rules.

A. If an evaluation indicates non-compliance with Rules or Standards of the Office, the program~~[provider]~~ and Office staff shall develop a plan of action to achieve compliance while continuing to care for minors~~[children]~~ or adults.

B. The plan of action shall include the following:

1. a statement of each violation,
 2. a method and date for resolution, and
 3. all plans of action shall be documented in writing and signed by the appropriate program staff[provider].

C. Technical assistance shall be offered to assist a program[~~or provider~~] to comply with a plan of action.

D. If a program[provider] fails or refuses to comply with the plan of action, a Notice of Agency Action shall be sent to the program[provider] from the Office.

E. If the program[provider] fails or refuses to meet requirements or the Notice of Agency Action, the license may be suspended or revoked.

F. Directors[~~or providers~~] of programs shall be required to post the Notice of Agency Action indicating the violation of standards. This shall be posted in a conspicuous place for review by consumers or parents or guardians of consumers. The plan of action shall be reviewed by Office staff. When compliance is achieved, it shall be recorded in the program's[providers] record. A letter showing compliance shall be sent to the program[provider] to post for review by consumers or parents or guardians of consumers.

R501-1-6. License Violation.

A. When a program violates the terms of the license, the Office, with notification to the appropriate Division, may deny, condition, suspend, or revoke a license for the following:

1. violation of the Rules of the Office,
~~[— 2. conviction for an illegal act,]~~
- [3]2. conduct in the provision of service that is or may be harmful to the health or safety of persons receiving services, or
~~[— 4. investigations of abuse, neglect or exploitation, or]~~
- [5]3. exercise of professional judgment of license specialist in coordination with Office Director.

B. Sanctions

1. Denial: The Office shall give written notice of the denial of an initial or renewal application within 30 days of the date of decision. The notice shall contain a statement of the basis of the denial and shall inform the applicant of the right to request an administrative hearing as provided by DHS[Department] policy. The applicant must make written request to the Office Director for a hearing within ten days of the receipt of the Notice of Agency Action.

2. Conditional: The Office shall give written Notice of Agency Action of the conditional status of an existing license. The notice shall contain statement of cause for action and shall inform licensee of the right to an administrative hearing for appeal.

a. A conditional status allows a program to continue operation, if there is no immediate threat to the health or safety of consumers.

b. The duration of the conditional status shall be determined by the Office. The period shall allow sufficient time for correction of the noted deficiencies and the completion of an investigation of abuse or neglect.

3. Suspension: The Office shall give written Notice of Agency Action of a suspension of an existing license. The notice shall contain a statement of cause for action and shall inform the licensee of the right to an administrative hearing or appeal. A suspension of a license prohibits the operation of the program and State payment for consumers.

a. The duration of the suspension shall be determined by the Office. The suspension period shall allow sufficient time for correction of the noted deficiencies or the completion of an investigation.

b. A license may be suspended a maximum of two times. A third time violation of rules or standards of the Office, which would normally result in a suspension will result in revocation.

c. The suspension shall be in force until an administrative hearing has been conducted and a final decision has been made, or the program has complied with issues leading to suspension.

4. Revocation: The Office shall give written Notice of Agency Action of a revocation of an existing license. The notice shall contain a statement of cause for action and shall inform the licensee of the right to a hearing or appeal.

a. A revocation of a license prohibits the operation of the program. The revocation shall be final.

b. The program[provider] will be allowed to apply for a new license, after a minimum of one year. However, after two revocations, an application for a license shall not be considered.

C. The sanctions may be one of the following: [~~Sanctions May Be:~~]

1. Prospective: A licensee whose license may be suspended or revoked, shall receive written Notice of Agency Action at least 30 days before the effective action of such suspension or revocation. The notice of suspension or revocation shall state the basis for action.

a. The licensee shall meet the requirements set forth in the notice, or the suspension or revocation shall automatically become final. The notice shall also advise the licensee of the right to an administrative hearing.

b. [~~The Department~~]DHS shall not place any consumer in a facility which has been notified of prospective suspension or revocation.

2. Immediate: If the Office Director finds that the health or safety of the consumers so requires, the immediate suspension or revocation of a license shall be ordered. The Notice of Agency Action shall contain a statement of the basis for the order and shall inform licensee of the right to an administrative hearing. The final decision to suspend or revoke a license shall be made by the Office Director with notification to the appropriate Division.

D. Notice: All written Notices of Agency Action shall be sent by certified mail or hand delivered to the address shown on the license or application.

R501-1-7. [Provider]Program Appeal.

A. Request for Hearing: A licensee whose license is being denied, suspended or revoked may request an informal administrative hearing. The request must be in writing, contain a statement of the problem, and be sent to the Office Director within ten days of the report of the adverse action. The Office will follow the procedure for program[provider] hearings according to Utah Administrative Practice Act in accordance with DHS[Department] policy.

B. A hearing shall be conducted by the Office Director when the Office staff has initiated the cause for action.

C. Grievances: If the licensee has other grievances that result in a written request for a hearing not related to suspension, revocation, or denial of a license, but which are related to the

operation of the program, the request should be for a [an agency] conference with the Office Director.

R501-1-8. Variances.

A variance is an authorized deviation from the specifics of a Rule.

A. The Office Director, or designee, may grant a variance to [licensing] rules or standards of the Office, if it is in the best interests of the consumer and maintains basic health and safety requirements with notice to the appropriate Division.

B. The licensee must submit a written request for a variance, describing the method of fulfilling the intent of the Rules or standards of the Office to maintain the health and safety of the consumer.

C. The Office shall notify the licensee of the approval or denial of the conditions of the variance, in writing, within 30 days.

D. The Office shall maintain a record, and submit a copy to the appropriate Division.

R501-1-9. Allegations of Abuse or Neglect.

When allegations of abuse, neglect, or exploitation, pursuant to 62A-4a-413, 62A-311.1, or 62S02-105.106, are made against a program [provider or foster parent], the following shall apply:

A. Office staff shall immediately notify the appropriate investigative agency, according to the Abuse and Neglect Reporting Requirements.

B. During the investigation the Office staff may, after consultation with the Director or designee, place a license on conditional status.

1. The Office staff shall inform the program [provider or foster parents] with a written Notice of Agency Action.

2. The notice shall include the following:

- a. a statement that the license will be placed on conditional status during the investigation of abuse, neglect, or exploitation, and
- b. a statement of cause for conditional status and a plan of corrective action for the program [provider or foster parents].

3. The Notice of Agency Action shall be sent by certified mail or hand delivered.

4. A copy of the Notice of Agency Action shall be sent to the appropriate Division representative.

D. When notified of the results of the investigation by the investigating agency, the Office staff shall take the following action:

- 1. If substantiated, the license may be suspended or revoked.
- 2. If unsubstantiated, the license shall return to its former status.

KEY: licensing, human services

[December 2, 1997]1998

62A-2-101 et seq.[62A-2]

Notice of Continuation September 2, 1997



Natural Resources, Energy and Resource Planning

R637-1

Utah Energy Saving Systems Tax Credit (ESSTC) Rules

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 20678

FILED: 01/15/98, 16:18

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Pursuant to Section 59-7-611, the Office of Energy and Resource Planning may promulgate standards for residential and commercial energy systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

SUMMARY: This rule establishes additional requirements and standards not defined in the statute which are necessary to be eligible for the Energy Saving Systems Tax Credit (ESSTC). For a complete description of eligibility requirements, this rule should be used in conjunction with Sections 59-7-611 and 59-10-601 through 59-10-604. This rule applies to systems completed and placed in service beginning on January 1, 1997. It is not the purpose of this rule to assess or assure the absolute value of a proposed energy system. Rather its purpose is to act as a guide for both the dealer and consumer in an effort to facilitate a better understanding of the law and proper use of the ESSTC, and to aid the consumer in making an informed choice regarding a proposed energy saving system.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 59-7-611 and 59-10-601 through 59-10-604

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No costs beyond those on the fiscal note (S.B.36).

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: None.

(DAR Note: S.B. 36 is found at 1997 Utah Laws 345, and was effective January 1, 1997.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact beyond the fiscal note (S.B. 36).

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

Natural Resources
Energy and Resource Planning
Suite 3610
1594 West North Temple
Box 146480
Salt Lake City, UT 84114-6480, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Susan Jancart at the above address, by phone at (801) 538-5417, by FAX at (801) 521-0657, or by Internet E-mail at nroerp.sjancart@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Jeffrey S. Burks, Director

R637. Natural Resources, Energy and Resource Planning.
R637-1. Utah Energy Saving Systems Tax Credit (ESSTC) Rules.

R637-1-1. Purpose.

(1) This rule establishes additional requirements and standards not defined in the statute which are necessary to be eligible for the Energy Saving Systems Tax Credit (ESSTC). For a complete description of eligibility requirements, this rule should be used in conjunction with Sections 59-7-611 and 59-10-601 through 59-10-604.

(2) This rule applies to systems completed and placed in service beginning on January 1, 1997.

(3) It is not the purpose of this rule to assess or assure the absolute value of a proposed energy system. Rather its purpose is to act as a guide for both the dealer and consumer in an effort to facilitate a better understanding of the law and proper use of the ESSTC, and to aid the consumer in making an informed choice regarding a proposed energy saving system.

R637-1-2. Authority.

(1) Pursuant to Section 59-7-611, the Office of Energy and Resource Planning may promulgate standards for residential and commercial energy systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(2) Approval of the application implies that, based on the information presented by the applicant, the Office of Energy and Resource Planning believes that the energy system has been installed and is a viable system for saving energy or for the production of energy from renewable resources.

R637-1-3. Certification Process.

(1) A potential participant shall complete the formal application and submit it along with the requested receipts to the Office of Energy and Resource Planning.

(2) The Office of Energy and Resource Planning shall review the application and determine whether the system is accepted or denied for the tax credit program.

(3) If all provisions of this rule have been fulfilled, the Utah Office of Energy and Resource Planning shall certify a system.

(4) The Office of Energy and Resource Planning shall notify the applicant by mail of the decision made.

(5) If the application is approved, the applicant shall receive certification in the form of a TC-40E Utah tax form, partially completed by the Office of Energy and Resource Planning.

(6) The applicant can return this form along with other Utah tax forms to the Tax Commission for processing.

R637-1-4. General Rules for Eligibility.

New systems and upgrades of systems may be eligible for the credit; maintenance costs are not eligible for a tax credit.

R637-1-5. Eligible Systems.

(1) Alternative energy systems must comply with all applicable state, federal and local rules, regulations, codes and standards. This rule does not relieve the applicant of responsibility for such compliance.

(2) Alternative energy systems must produce more energy than they consume.

R637-1-6. Definitions.

(1) Most definitions used in this rule are defined in Sections 59-7-611 and 59-10-601.

(2) In addition:

(a) "Installer" means a person or persons who set up the system for actual use.

(b) "Loaded structure" means a part of the building that provides support to that building.

(c) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from collection point to either the storage or heat use area.

(d) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(e) "Upgrade" means a device which extends the usefulness of, or raises the quality of, an existing system.

(f) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R637-1-7. Certification Requirements.

(1) Systems must meet the applicable individual system requirements listed in R637-1-8.

(2) Because it is not the intent of this rule to inhibit or discourage individuals who wish to design their own energy saving systems, the Office of Energy and Resource Planning reserves the right to exempt an applicant from certain requirements or standards

if the system's performance can be demonstrated and the system's simple payback is similar to commercially available systems.

R637-1-8. Individual System Requirements.

(1) Active Solar Thermal System Requirements

(a) For cost computation purposes the active solar thermal system ends at the interface between it and the conventional heating system. No part of the conventional heating system shall be eligible for the tax credit.

(b) In addition an active system must contain the following components:

(i) solar collectors

(ii) storage system

(iii) a heat transferral system;

(2) Active Solar Electric (Photovoltaics) System Requirements

(a) For cost computation purposes the active solar electric system ends at the interface between it and the point of distribution.

(b) The cost of a solar photovoltaic system as a residential energy system or a commercial energy system providing electrical or mechanical power, including the cost of installation, design, modules, control systems, inverters, tracking systems and energy storage, may be eligible for the ESSTC provided it can be shown that the system provides more energy than it uses and is exposed to sunlight a minimum of six hours/day, subject to weather conditions.

(3) Passive Solar System Requirements

(a) Eligible for the ESSTC shall be the cost of any passive system, such as, a trombe wall, water wall, thermosyphon, solarium, direct gain, and any system that can be proven to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvres, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(b) A solarium is eligible provided that it supplies heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices as well as prevent summer overheating that can increase the load on the building's cooling system.

(c) Insulated windows and other glazing devices shall not be eligible unless they are part of a direct gain passive solar system which utilizes thermal mass storage and a passive or active heat transportation system to provide heating throughout the building.

(d) No certification shall be given if the Office of Energy and Resource Planning concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months. The passive system shall receive at least four hours of sunlight per day during the winter months of December through March, subject to weather conditions, and shall be primarily south facing.

(e) Window Eligibility Calculation Formula: $(S-N)/S = T$

Where:

S = Percentage of glazing contained in the solar surface of the south facing wall with respect to the area of the wall.

N = Percentage of glazing on non-solar surfaces which are north, east, west and non-solar south walls, with respect to the area of those walls.

T = Total percentage of passive solar glazing eligible for tax credit.

(f) Heat transportation systems shall be eligible for the tax credit provided they are part of the passive solar design and would not be used in a conventional heating system.

(g) Thermal storage mass shall be eligible for the tax credit provided the mass is a non-loaded structure. Fifty percent of the cost of a loaded structure shall be eligible with the total thermal mass portion of the tax credit. Thermal storage mass may not exceed 30 percent of the total tax credit.

(h) In addition, a passive system must contain the following components:

(i) a means to allow the solar energy to the unit;

(ii) an absorbing surface;

(iii) a thermal storage mass located within the conditioned space;

(iv) a heat transferral system;

(v) protection from summer overheating and excessive winter heat-loss;

(4) Wind Turbine System Requirements

(a) The cost of all DC/AC inverters, towers, storage devices, power lines, wind turbines/wind machines and the system installation and design shall be eligible for the ESSTC as a residential energy system or a commercial energy system providing either electrical or mechanical power by intercepting and converting wind energy and transferring this energy by a separate apparatus to the point of use or storage.

(b) All commercial wind energy systems for which the ESSTC is sought must:

(i) be backed by a written guarantee that assures the purchaser a full refund in the event that the system does not provide the minimum level of performance as claimed or stipulated by the seller.

(5) Hydro System Requirements

(a) The cost of all water power wheels, turbines, generators, transformers, power lines, penstocks, valves, drains, diversion structures, -- except storage dams, fish facilities, canals, meters for measurement of electricity or water, cost of design, installation and control equipment may be eligible for the ESSTC if the hydro system provides electrical or mechanical power by intercepting and converting kinetic water energy and transferring that energy by separate apparatus to the point of use or storage.

(6) Biomass System Requirements

(a) The costs associated with equipment, design and installation for a biomass energy saving system may be eligible for the ESSTC so long as the system provides more energy than it consumes. Conversion methods may include combustion, thermochemical, biochemical or photochemical. The biomass system must have a conversion system and a separate apparatus to transfer the converted energy to the point of use or storage. Wood stoves used for conventional heating purposes are excluded from ESSTC eligibility.

R637-1-9. Multiple Unit Eligibility Requirements.

If the credit is to be assigned to the users of the individual units, the following formula shall be used to calculate the amount of the credit the individual can take: $25\% \times v/V \times C = TC$

Where:

v = the volume of the individual unit.

V = the total volume of the entire unit using the alternative energy system.

C = the installed cost of the total system.

TC = the amount of tax credit to which the individual user is entitled.

R637-1-10. Installation Cost Requirements.

Detailed billing which includes reasonable time and associated costs of installation must be documented and submitted to the Office of Energy and Resource Planning along with the application and other requested receipts.

R637-1-11. Easement Cost Requirements.

Easement costs required to ensure solar access are eligible for the ESSTC.

R637-1-12. Design Cost Requirements.

Architectural or engineering design costs, system simulation costs, and system analysis costs necessary to balance or optimize system performance shall be eligible for the ESSTC if they are documented and provided that equipment is purchased and installed in conjunction with these services.

KEY: hydroelectric power, solar energy, wind power, tax credits 1998

**59-7-611
59-10-601 through 59-10-604**



**Public Safety, Driver License
R708-14**

Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 20632
FILED: 01/08/98, 14:36
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The Attorney General's office recommends that new language be added so the Driver License Division has the discretion to determine if an individual's request for a hearing is appropriate and reasonable as per statute.

SUMMARY: The rule is being amended so the Driver License Division has the discretion to determine if an individual's request for a hearing is reasonable as per statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 53-3-104, and Subsection 63-46b-5(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is no fiscal impact from amending the rule.

❖LOCAL GOVERNMENTS: There is no fiscal impact from amending the rule.

❖OTHER PERSONS: There is no fiscal impact from amending the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no fiscal impact from amending the rule.

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

Public Safety
Driver License
Calvin Rampton
4501 South 2700 West
PO Box 30560
Salt Lake City, UT 84130-0560, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Vinn Roos at the above address, by phone at (801) 965-4456, by FAX at (801) 965-4496, or by Internet E-mail at vroos@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: David A. Beach, Director

**R708. Public Safety, Driver License.
R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.**



R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63-46b-3(1), alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63-46b-3(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the date of arrest or occurrence which prompted the request for division action. A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.



KEY: adjudicative proceedings
~~[July 31, 1997]~~ **March 4, 1998**

53-3-104
63-46b-5(1)

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: J. Francis Valerga, Special Counsel

◆ ◆

**Public Safety, Law Enforcement and
Technical Services, Criminal
Identification**

R722-1

**Non-Criminal Justice Agency Access to
State Criminal History Files**

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 20629
FILED: 01/06/98, 15:46
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: R722-1 was written in 1987 to assist the department in determining who qualified to have access to criminal history record information. In 1997, the legislature rendered R722-1 moot by defining "qualifying entity" in Section 53-5-202.

SUMMARY: This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 53-5-214

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
 - ❖ LOCAL GOVERNMENTS: None.
 - ❖ OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Public Safety
Law Enforcement and Technical Services,
Criminal Identification
Second Floor, Calvin L. Rampton Building
4501 South 2700 West
Box 141775
Salt Lake City, UT 84114-1775, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
J. Francis Valerga at the above address, by phone at (801) 965-4062, by FAX at (801) 965-4608, or by Internet E-mail at psdomain.psmain.jfvalerg@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

R722. Public Safety, Law Enforcement and Technical Services, Criminal Identification.

~~[R722-1. Non-Criminal Justice Agency Access to State Criminal History Files:~~

~~**R722-1-1. Authority:**~~

~~—It is generally recognized that sensitive employment positions exist in both government and the private sector, which impact the safety and interests of the public at large. Criminal history information relating to these positions may assist in determining if an individual is worthy of consideration to hold the trust required to function in such critical positions.~~

~~—Legislative constraints, public policy, and privacy considerations make access to criminal history information available only when essential and in the best interests of the public.~~

~~**R722-1-2. Petition Policy:**~~

~~—Accordingly, the following criteria are deemed by the Commissioner of Public Safety to be of such emergent necessity so as to authorize disclosure of conviction information to non-criminal justice agencies:~~

~~—A. Employees whose duties involve the acting in a fiduciary capacity over the assets of others. (A person in a fiduciary capacity is one who handles money, not his/her own, for the benefit of another, which necessitates great confidence and trust on the one part and a high degree of good faith on the other part.)~~

~~—B. Employees whose duties involve classified information relating to interests of national security:~~

~~—C. Individuals applying for the care, custody, and control of minor children:~~

~~**R722-1-3. Petition Procedure:**~~

~~—Criminal history conviction information will only be furnished to employers for prospective employees and not for vendors, subcontractors, etc. Additionally, criminal history information shall be made available only to persons involved in the hiring, background investigation, or job assignment to the subject of the record:~~

~~—The application for access of criminal history information will be reviewed by the Bureau of Criminal Identification staff for relevancy and compliance with the above regulations. Convictions for offenses which do not relate to the applicant's particular suitability for employment in the position for which he has applied shall not be furnished:~~

~~—Agencies granted access to the Utah Criminal History files shall fully comply with the laws and regulations promulgated by the Utah State Legislature and the Utah Department of Public Safety:~~

~~**KEY: criminal records**~~

~~1987~~ ~~77-26-16~~
~~Notice of Continuation 1993]~~

Public Service Commission,
Administration

R746-331

Determination of Exemption of Mutual
Water Corporations

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 20627

FILED: 01/05/98, 14:45

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To reestablish the Commission's guidelines for exemption from Commission jurisdiction and the procedure used for that determination.

SUMMARY: This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers. Section 54-2-1 defines water corporation and water system. This rule establishes the Commission's guidelines for exemption from Commission jurisdiction and the procedure used for that determination.

(DAR Note: This rule's five-year review was not filed by January 1, 1998, causing the rule to expire. A corresponding 120-day (emergency) rule that is effective as of 01/05/98 is under DAR No. 20626 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 54-1-1

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
 - ❖ LOCAL GOVERNMENTS: None.
 - ❖ OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

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

Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Barbara Stroud or Carl Mower at the above address, by phone at (801) 530-6716 or (801) 530-6698, by FAX at (801) 530-6796, or by Internet E-mail at pupsc.bstroud@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.

R746-331. Determination of Exemption of Mutual Water Corporations.

R746-331-1. Conditions for Finding of Exemption.

A. Upon the Commission's own motion, complaint of a person, or request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine whether an entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission's jurisdiction.

B. In conducting the inquiry, the Commission shall elicit information from the subject of the inquiry concerning:

1. the organizational form of the entity and its compliance status with the Utah Division of Corporations;

2. ownership and control of assets necessary to furnish culinary water service, including water sources and plant;

3. ownership and voting control of the entity. To elicit this information, the Commission may adopt a questionnaire asking for the information in form and in detail that the Commission shall find necessary to make its jurisdictional determination; the questionnaire may include a requirement that documentation be furnished therewith, including copies of articles of incorporation, and effective amendments thereto, filed with the Utah Division of Corporations and certified by that agency, together with a certificate of good standing therewith.

C. If, on the basis of the information elicited, the Commission finds that the entity is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous, then the Commission shall issue its finding that the entity is exempt from Commission jurisdiction, and the proceeding shall end. Issuance of the finding shall not preclude another Commission inquiry at a later time if changed circumstances or later-discovered facts warrant another inquiry.

D. If, on the basis of the information elicited, the Commission determines that the entity is subject to Commission jurisdiction, the Commission shall initiate the proceedings, including an Order to Show Cause, as shall be necessary to assert Commission jurisdiction.

KEY: mutual water corporations*, public utilities, water 1998 54-2-1

Public Service Commission,
Administration
R746-341
Lifeline Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 20677

FILED: 01/15/98, 13:51

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: To update the eligibility, verification procedures, and reporting requirements, procedures, service features, funding, and administration of the Lifeline program.

SUMMARY: In R746-341-1, changes made to indicate that all eligible telecommunications carriers shall establish lifeline telephone service pursuant to Section 214 of the Federal Communications Act; Section R746-341-2 is new - defining, for purposes of this rule, "applicant" and "appropriate state agency"; in Section R746-341-3, changes made to update eligibility requirements for the Lifeline program; in Section R746-341-4, changes made to update verification procedures; in Section R746-341-5, an additional subsection has been added disallowing disconnection of service for nonpayment of toll service for qualifying Lifeline customers (Subsection R746-341-5(F)) and lifeline service restrictions have been amended to restrict Lifeline discount to one residential access line; in Section R746-341-6, changes made to annual and semi-annual reporting; changes to the date reports are due; changes to include all telecommunications corporations, and deleted some requirements, i.e., number of new subscribers, number of reconnecting subscribers, and number of subscribers by type of usage service rate; in Section R746-341-7, addition to Subsection R746-341-7(B) requires that the Lifeline surcharge be paid by all non-Lifeline customers in the state and Subsection R746-341-7(C) adds requirement for collecting the surcharge to include all non-Lifeline customers; and Section R746-341-8 is new. Also, additions and corrections have been made throughout the rule to clarify and improve language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Sections 54-4-4 and 54-8b-15

FEDERAL MANDATE FOR THIS FILING: Section 254 of the Federal Communications Act

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None - affected agencies are already performing the functions required by the existing rule.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: No additional costs - telecommunications corporations are already collecting and using universal service fund revenues required by Section 54-8b-15. The Lifeline program is a subset of the universal service fund program. Additional income may be realized by providing service to additional customers that would otherwise not subscribe to any telecommunications service.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs - Affected persons are currently performing the functions and acts specified in this rule. This rule is a subset of the universal service fund program required by Section 54-8b-15.

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

Public Service Commission

Administration

Fourth Floor, Heber M. Wells Building

160 East 300 South

Salt Lake City, UT 84111, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Barbara Stroud at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at pupsc.bstroud@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/05/98

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.**R746-341. Lifeline Rule.****R746-341-1. Applicability.**

~~A. A local exchange carrier larger than 5,000 access lines]~~ Telecommunications corporations that have been designated as eligible telecommunications carriers by the Commission, pursuant to Section 214 of the Federal Communications Act, shall establish a lifeline telephone service pursuant to the requirements of Sections 2 through [5]8.

~~B. A local exchange carrier may establish a lifeline telephone service pursuant to the requirements of Sections 2 through 5, upon making application and receiving approval from the Public Service Commission.]~~

R746-341-2. Definitions.

A. "Applicant" -- means a head of a household or person in whose name the property or rental agreement resides.

B. "Appropriate State Agency" -- means the agency administering the public assistance programs listed in R746-341-3(A).

R746-341-3. Eligibility Requirements.

A. The ~~[local exchange]~~ eligible telecommunications carriers shall provide lifeline telephone service to any applicant ~~[that]~~ who self-certifies ~~[, that they are currently eligible (though it is not necessary that they be participating)]~~ eligibility for public assistance under one of the following or its successor programs:

1. ~~[Aid to Families with Dependent Children]~~ Temporary Assistance to Needy Families (TANF);

2. Emergency Work Programs;

3. Food Stamps;

4. General Assistance;

5. Home Energy Assistance Target Programs;

6. Medical Assistance;

7. Refugee Assistance;

8. Supplemental Security Income.

B. ~~The term "applicant" as used in Paragraph A refers to a head of a household or person in whose name the property or rental agreement resides.~~

~~C.~~ Self-certification will be upon a form supplied by the eligible telecommunications[local exchange] carrier or the [Department of Social Services which] appropriate state agency and contain[s] the following:

1. applicant's name, current telephone number, and social security number;
2. a request for lifeline service;
3. an affirmative statement that the applicant qualifies for lifeline service.
4. a statement as to whether the person is participating in one of the programs set out in Subsection A above or is simply eligible for [such] one or more of those programs;
5. a statement that if the applicant ~~understands that if he/she~~ is later shown to have submitted a false[ly] self-certification[ed] for the [H]Lifeline program, ~~that he/she~~ the applicant will be responsible [for] to pay the difference between the lifeline rate and the otherwise applicable rate;
6. a statement whether this is a reconnect or not; and
7. signature.

R746-341-[3]4. Verification Procedures.

A. At least annually, the eligible telecommunications[local exchange] carriers offering [H]Lifeline telephone service shall provide the [Utah Department of Social Services] appropriate state agency with computer tapes, written lists, or personal computer disks, listing their [H]Lifeline service customers' names, telephone numbers, addresses and ~~their~~ social security numbers. Eligible telecommunications carriers with more than 300 Lifeline telephone customers shall provide the information in an electronic format useable by the appropriate state agency.

B. Lifeline telephone customers who do not participate in any of the programs listed in Section [2]3, but who are qualified to participate in [such] those programs, shall be certified by the [Utah Department of Social Services] appropriate state agency as being eligible for any of the qualifying programs, and shall thereafter be included on a ^[2]Lifeline Only^[2] verification list maintained by the [Department] agency. Lifeline customers on ~~such~~^[2]Lifeline Only^[2] lists will be required to annually recertify with the [Utah Department of Social Services] appropriate state agency to verify their continued eligibility for [H]Lifeline telephone service.

C. Eligible telecommunications carriers shall notify a ^[A]ny [H]Lifeline telephone service customer ~~that~~ who fails to appear on the [Utah Department of Social Service] appropriate state agency's listing of public assistance program participants, or ^[2]Lifeline Only^[2] list, ~~local exchange carrier shall notify such customer that such~~ that the customer is now ineligible and is no longer entitled to the [H]Lifeline service rate.

D. A ^[ny] subscriber denied [H]Lifeline telephone service under [Paragraph] Subsection C above shall be entitled to resubscribe to [H]Lifeline service only after the eligible telecommunications[local exchange] carrier providing telephone service to [such] that subscriber has received confirmation from the [Utah Department Social Services] appropriate state agency that the discontinued [H]Lifeline telephone services subscriber is currently a participant in a state public assistance program or is qualified to participate in [such] those programs.

E. A ^[ny] [H]Lifeline telephone service customer who does not qualify and has falsely self-certified and participated in the [H]Lifeline program will be responsible [for] to pay the difference between the [H]Lifeline rate and the otherwise applicable rate for the length of time the customer subscribed to [H]Lifeline telephone service for which the customer was not eligible. ~~The local exchange carrier may, at its option, choose to backbill the customer for such amount.~~

R746-341-[4]5. Lifeline Telephone Service Features.

A. ~~The~~ Lifeline telephone service provided by ~~program shall~~ apply to any residence class or grade of service provided by local exchange carriers in Utah. Local exchange eligible telecommunications carriers shall consist of provide the following features in a lifeline telephone service, to eligible subscribers:

~~Those who are eligible for lifeline telephone service shall pay a rate for month basic local service which is equal to:~~

~~1.~~ dial tone line, ~~plus~~ usage charges or their equivalent, and any Extended Area Service (EAS) charges, less a discount equal to the end user common line charge ~~imposed~~ and any other matching funds established by the Federal Communication Commission, ~~plus~~

~~2. any Extended Area Service (EAS) charges;~~

B. When c ^[C]ustomer security deposits [requirements] are otherwise required, they will be waived for [H]Lifeline telephone service subscribers [unless such subscriber has had a prior credit problem with, or has an outstanding bill with any local exchange carrier.] if the subscriber voluntarily elects to receive toll blocking.

C. ~~All e~~ Companies providing [H]Lifeline service shall apply for the Link-Up America Plan provided by the Federal Communications Commission.

D. In addition to the ~~reduction of~~ Link-Up America reduction, [H]Lifeline qualifying customers are entitled to a fifty percent (50 percent [%]) reduction of the remaining connection charges ~~once every twelve (12) months~~.

E. Lifeline telephone service subscribers will receive a waiver of the nonrecurring service charge for changing the type of local exchange usage service to [H]Lifeline service, or changing from flat rate service to message rate service, or vice versa, but only once during any twelve (12)-month period.

F. Lifeline service shall not be disconnected for nonpayment of toll service.

G. Lifeline telephone service will be subject to the following restrictions:

1. [Applicants must be head of household or person in whose name the property or rental agreement resides.

~~2.~~ Lifeline telephone service will only be provided to the applicant's principal residence.

^{[3]2.} A [H]Lifeline telephone service subscriber will only be allowed to subscribe to a receive a Lifeline discount on one single residential access line.

R746-341-[5]6. Reporting Requirements.

A. Telecommunications corporations, excluding eligible telecommunications[local exchange] carriers shall file an [semi-]annual report, by [January 31 and July] March 31 of each year with the Division of Public Utilities, on their [H]Lifeline telephone service programs. [Companies with less than 5,000 access lines

shall only file a report annually by January 31. This report shall include the following information:

- 1. administrative costs associated with the Lifeline telephone service program; and
- 2. the amount and calculation basis of monthly Lifeline surcharge collections.
- 3. number of lifeline telephone service subscribers that are new local exchange service subscribers;
- 4. number of lifeline telephone service subscribers that are reconnecting local exchange service;
- 5. Eligible telecommunications carriers shall submit, to the Division of Public Utilities, a semi-annual report, by June 30 and December 31, of each year, containing a description of the eligible telecommunications carrier's Lifeline program. The reports shall also contain monthly information on:
 - 1. the Lifeline surcharge revenues billed and collected;
 - 2. the forgone revenue resulting from the discounts provided to Lifeline customers;
 - 3. the amounts of administrative, advertising, voucher and other program expenses;
 - 4. interest accrual amounts on Lifeline and Link up funds; and
 - 5. the number of Lifeline telephone service subscribers by exchange area;
 - 6. number of lifeline telephone service subscribers by type of local exchange usage service rate.

R746-341-6. Funding of Lifeline.

A. Total cost of providing Lifeline telephone service, including the administrative costs of the eligible telecommunications carriers and the cost of the appropriate state agency, shall be funded from an equal surcharge imposed upon the non-Lifeline access lines of all telecommunications corporations offering lifeline telephone service.

B. The Commission shall hold hearings as it determines necessary for the purpose of establishing surcharge rates which it deems reasonable to be assessed on all non-Lifeline access lines in the state to provide for the funding of Lifeline telephone service.

C. Thirty days following approval of the surcharges referred to in Subsection B above, the telecommunications corporations required to offer such service shall go into effect. shall begin collecting the new surcharge from all non-Lifeline access lines and remitting the funds collected to the Commission as described in R746-341-8. The initial rate to be charged shall be \$0.10 per month per non-Lifeline access line. Such initial rate shall be collected by telecommunications corporations beginning April 1, 1998.

R746-341-8. Collection and disbursement of Lifeline Funds.

A. At the end of each month, telecommunications corporations shall submit to the Commission all Lifeline surcharge revenues collected. Eligible telecommunications carriers shall submit only the Lifeline surcharge revenues in excess of their monthly Lifeline program expenses and Lifeline discounts granted

pursuant to R746-341-4. Telecommunications corporations with fewer than 5,000 access lines may submit the funds on a quarterly basis. Lifeline funds received by the Commission shall be treated in the same manner as Section 54-8b-15 Universal Service Fund funds.

B. Within 30 days after review and audit of an eligible telecommunications carrier's semi-annual report, the Public Service Commission shall disburse from Lifeline surcharge funds an amount equal to the net difference between the eligible telecommunications carrier's semi-annual Lifeline surcharge revenues collected and Lifeline program expenses and Lifeline discounts granted.

KEY: telephone, telecommunications, rules and procedures, lifeline rates
[1990]1998 54-4-1
Notice of Continuation November 15, 1995 54-4-4



Tax Commission, Property Tax
R884-24P-7
Assessment of Mining Properties
Pursuant to Utah Code Ann. Section
59-2-201

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 20649
FILED: 01/13/98, 09:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Section 59-2-201 requires the Tax Commission to appraise mines at fair market value.

SUMMARY: Amendment deletes language that provided an apportionment formula for productive mining property located in more than one tax area.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 59-2-201

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None.
❖ LOCAL GOVERNMENTS: None.
❖ OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Tax Commission
Property Tax
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Pam Hendrickson at the above address, by phone at (801) 297-3902, by FAX at (801) 297-3919, or by Internet E-mail at txnet1.phendric@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

3. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic

product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

4. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

5. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

6. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

7. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

8. "Fair market value" is as defined in Section 59-2-102.

9. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

10. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

11. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

12. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

13. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

14. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

15. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

16. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

17. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

18. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

~~C. The fair market value of productive mining property located in more than one tax area, less the value of the machinery and equipment, improvements, and land surface rights, will be~~

apportioned to the tax areas based on the relative investment in machinery and equipment, improvements, and land in each location. The value of the machinery and equipment, improvements, and land will be apportioned to the districts where they are located.

—D.] The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

KEY: taxation, personal property, property tax, appraisal
August 21, 1997 **59-2-201**
Notice of Continuation May 8, 1997



**Workforce Services, Employment
Development
R986-305
Resources**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 20675
FILED: 01/15/98, 06:57
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The purpose of this change is to implement a more liberal policy that is allowed by Section 1902(r)(2) of the Social Security Act. That policy allows Medicaid institutional long-term care clients to exempt the asset value of a paid up whole life insurance policy if the policy is assigned to the State. This change also updates the average private pay rate for nursing homes. This change is based on an updated average cost as determined by the Department of Health.

SUMMARY: This rule defines the provision that allows institutional long-term care or waiver clients to assign the value of a paid up life insurance policy to the State so that the value of that policy can be exempted as an asset. This rule also changes the average private pay rate for nursing homes from \$2,254 to \$2,791.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None.
❖LOCAL GOVERNMENTS: None.
❖OTHER PERSONS: None.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Workforce Services
Employment Development
Fifth Floor
140 East 300 South

PO Box 45245
Salt Lake City, UT 84145-0249, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Shawn Potter at the above address, by phone at (801) 531-3783, by FAX at (801) 531-3785, or by Internet E-mail at spotter@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/03/98.

THIS FILING MAY BECOME EFFECTIVE ON: 03/04/98

AUTHORIZED BY: Robert C. Gross, Executive Director

**R986. Workforce Services, Employment Development.
R986-305. Resources.**



R986-305-506. Transfer of Resources for Institutional Medicaid.

1. The department adopts Subsection 1917(c) of the Compilation of the Social Security Laws, 1993 ed., U.S. Government Printing Office, Washington, D.C., as amended by Public Law 101-508, section 13611, and the Omnibus Budget Reconciliation Act of 1993 which is incorporated by reference.
2. Current department practices:
 - a. The average private-pay rate for nursing home care in Utah is [~~\$2,254~~]\$2,791 per month.
 3. No sanction is imposed for the transfer of a home to a child of the client or client's spouse if the child lived in the home with the client and provided care to the client which permitted the client to remain at home rather than be institutionalized, and has done so for at least two years prior to the client's entry into the medical institution.
 4. No sanction is imposed for the transfer of a home to a sibling who has an equity interest in the home and who has lived in the home for at least one year immediately preceding the client's entry into a medical institution.
 5. No sanction is imposed for the transfer of any asset to a blind or disabled son or daughter, or to a trust established for the sole benefit of a blind or disabled son or daughter.
 6. No sanction is imposed for the transfer of a home to a son or daughter under 21 years of age.
 7. No sanction is imposed for the transfer of a home or any other asset from spouse to spouse.
 8. No sanction is imposed for the transfer of any asset to the individual's spouse or to another for the sole benefit of the spouse, or to a disabled or blind child or another for the sole benefit of the disabled or blind child, or to a trust established for the sole benefit of the disabled child or other disabled individual under age 65. Disability or blindness must meet the rules as defined under SSI Section 216 or Section 1614 of the Compilation of the Social Security Laws, 1993 edition. To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child,

or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision except for exempt trusts established under section 1917(d) of the Compilation of the Social Security Laws, 1993 ed., that provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder.

9. No sanction is imposed when the total value of a whole life insurance policy is irrevocably assigned to the state; and the recipient is the owner of and the insured in the policy; and no further premium payments are necessary for the policy to remain in effect. At the time of the client's death, the state shall distribute the benefits of the policy as follows:

a. Up to \$7,000.00 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and/or the burial and funeral funds for the client can not exceed \$7,000.00.

b. An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

c. Any amount remaining after payments are made as defined in a. and b. will be made to a beneficiary named by the client.

~~[9:]10.~~ A penalty of Institutional Medicaid ineligibility may be applied to any client who transfers a resource or whose spouse transfers a resource to a third party for less than fair market value except as identified above.

~~[10:]11.~~ Clients that claim an undue hardship as a result of a transfer of resources must meet both of the following conditions:

a. The client has exhausted all reasonable legal means to regain possession of the transferred resource. It is considered unreasonable to require the client to take action if a knowledgeable source confirms that it is doubtful those efforts will succeed. It is unreasonable to require the client to take action more costly than the value of the resource.

b. The client is at risk of death or permanent disability if not admitted to a medical institution or Waiver service. This decision will be based upon the client's medical condition and the financial situation of the client. Income of the client, client's spouse, and parents of an unemancipated client shall be used to decide if the financial situation creates undue hardship.

~~[11:]12.~~ After Institutional Medicaid eligibility is determined, the client's spouse, not living in the institution, may transfer any resource to any person without impacting the Medicaid eligibility of the institutionalized spouse.

~~[12:]13.~~ The portion of an irrevocable burial trust that exceeds \$7000 is considered a transfer of resources. The value of any fully paid burial plot, as defined in R986-305-501, 2. a., shall be deducted from such burial trust first before determining the amount transferred.

~~[13:]14.~~ If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively, so that they do not overlap. A sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends. If resources were transferred before August

11, 1993, applicable sanction periods for those transfers may overlap.

.....

KEY: trusts, resources*
~~[September 1, 1995]1998~~

26-18



End of the Proposed Rule Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the 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 (UTAH CODE Subsection 63-46a-7(1) (1996)).

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. A row of dots in the text (••••) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, 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 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule.

Emergency or 120-DAY RULES are governed by UTAH CODE Section 63-46a-7 (1996); and UTAH ADMINISTRATIVE CODE Section R15-4-8.

Health, Health Systems Improvement, Child Care Licensing

R430-10

Notice of Intent to License, Hourly Care Provider

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 20645
FILED: 01/09/98, 12:19
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: The purpose of this rule is to obtain a Notice of Intent to License for hourly care providers who previously had been exempted from state licensing prior to January 1, 1998, who provide care for four or more children for less than four hours per day.

SUMMARY: Requires the hourly care provider to file a Notice of Intent to License the facility prior to March 1, 1998 and to submit a functional description of the existing program including: age of children accepted for care; activity schedule; staffing qualifications; staffing schedule; and hours of operation.

(DAR Note: This emergency rule is superseded by a second emergency rule that is effective as of 01/20/98. The second emergency rule will be under DAR No. 20684 in the February

15, 1998, issue of the *Utah State Bulletin*. Copies of the second emergency rule can be obtained from the agency or from the Division of Administrative Rules.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Will require affected providers to pay licensing fees as established under law of \$25 base fee and \$1.50 per child annually. These fees are deposited in the General Fund.

❖LOCAL GOVERNMENTS: None.

❖OTHER PERSONS: Providers of previously exempted programs will be assessed a license fee to be deposited in the General fund of \$25 plus \$1.50 per child.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule requires the provider to submit a business license, fire clearance and functional statement. The cost to the providers is the licensing fee at \$25 plus \$1.50 per child.

EMERGENCY FILING JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

This rule implements 2nd Sub. H.B. 124 which passed in the 1997 General Legislative Session amending Title 26, Chapter 39. The law concerning hourly child care became effective January 1, 1998.

(DAR Note: 2nd Sub. H.B. 124 is found at 1997 Utah Laws 127 and is effective as of January 1, 1998.)

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

Health
Health Systems Improvement,
Child Care Licensing
288 North 1460 West
Box 142853
Salt Lake City, UT 84114-2853, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Debra Wynkoop-Green at the above address, by phone at (801) 538-6152, by FAX at (801) 538-6325, or by Internet E-mail at dwynkoop@email.state.ut.us.

THIS FILING IS EFFECTIVE ON: 01/09/98

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-10. Notice of Intent to License, Hourly Care Provider.

R430-10-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 39.

R430-10-2. Purpose.

The purpose of this rule is to obtain a Notice of Intent to License for child care providers who were exempted from state licensing prior to January 1, 1998 and who provide care for any individual child for no more than four hours per day.

R430-10-3. Definitions.

(1) "Drop-In Hourly Child Care" means the provision of child care for an individual child for less than four hours per day or for no more than 55 hours in a calendar month by an hourly care provider and where a parent is not on the premises.

(2) "Before and After School Program" means the provision of child care by an hourly care provider which is located at an educational building, operated by a school district, private educational program, or under private contract, to provide care for children after or before school hours.

(3) "On-site Hourly Child Care" means the provision of child care by an hourly care provider when a parent is on the site of a licensed business, for example an exercise gym, bowling alley or mall.

(4) "Hourly care provider" means a person who is not licensed under R430-100 and who provides continuous care and supervision for four or more children under 14 years of age in lieu of care ordinarily provided by parents in their own home for compensation that directly or indirectly affects or is related to a business licensed in this state.

R430-10-4. License Required.

(1) Except as exempted by Utah Code Section 26-39-105, no person may establish, conduct, or maintain a child care facility in this state without first obtaining a license from the Department.

(2) All hourly care providers must file a Notice of Intent to License with the Utah Department of Health on a form approved by the Department by March 1, 1998.

R430-10-5. Notice of Intent to License.

As part of the Notice of Intent to License the hourly care provider shall:

(1) Submit a functional description of the program including:

(i) age of children who are accepted for care,

(ii) activity schedule,

(iii) staffing qualifications

(iv) staffing schedule, and

(v) hours of operation.

(2) Submit a copy of the following:

(i) business license; and

(ii) fire clearance from the fire marshal having jurisdiction.

R430-10-6. License Issuance or Denial.

(1) The Department shall notify the hourly care provider within 30-days of receipt of the Notice of Intent to License what type of license the hourly care provider is required to obtain.

(2) Upon receiving the notice, the hourly care provider shall submit the following:

(a) A Request for Agency Action/License Application on a form furnished by the Department;

(b) Initial Criminal Background Screening on all covered individuals identified in R430-6-3(1);

(c) The required fees; and

(d) Policies and procedures.

(4) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application.

(5) The hourly care provider must reapply and pay the required fee if the application is not completed within 12 months.

(6) The Department shall issue a written notice of agency decision denying the license if the facility is not in compliance with the applicable rules, laws or regulations.

R430-10-7. License Provisions.

(1) The license is not assignable or transferable.

(2) Each license is the property of the Department. The licensee shall return the license within five days of closure.

(3) The licensee shall post the license on the facility premises in a place readily visible and accessible to the public.

KEY: child care facilities

January 9, 1998

26-39



Public Service Commission,
Administration
R746-331

Determination of Exemption of Mutual
Water Corporations

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 20626

FILED: 01/05/98, 14:45

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: This rule's five-year review was (due to a mistake by the Commission's paralegal) not filed by January 1, 1998, causing the rule to expire and, making it necessary to file it as an emergency rule and as a proposed new rule.

SUMMARY: This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers. Section 54-2-1 defines water corporation and water system. This rule establishes the Commission's guidelines for exemption from Commission jurisdiction and the procedure used for that determination.

(DAR Note: A corresponding proposed new rule is under DAR No. 20627 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 54-1-1

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None.
 - ❖ LOCAL GOVERNMENTS: None.
 - ❖ OTHER PERSONS: None.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

EMERGENCY FILING JUSTIFICATION: REGULAR RULEMAKING PROCEDURES would cause an imminent peril to the public health, safety, or welfare.

If a mutual water company is unable to obtain an exemption from the Commission, using the guidelines provided by this rule, that company could not obtain the certificate necessary to providing safe water service to the public.

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

Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Barbara Stroud at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at pupsc.bstroud@state.ut.us.

THIS FILING IS EFFECTIVE ON: 01/05/98

AUTHORIZED BY: Barbara Stroud, Paralegal

entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission's jurisdiction.

B. In conducting the inquiry, the Commission shall elicit information from the subject of the inquiry concerning:

1. the organizational form of the entity and its compliance status with the Utah Division of Corporations;
2. ownership and control of assets necessary to furnish culinary water service, including water sources and plant;
3. ownership and voting control of the entity. To elicit this information, the Commission may adopt a questionnaire asking for the information in form and in detail that the Commission shall find necessary to make its jurisdictional determination; the questionnaire may include a requirement that documentation be furnished therewith, including copies of articles of incorporation, and effective amendments thereto, filed with the Utah Division of Corporations and certified by that agency, together with a certificate of good standing therewith.

C. If, on the basis of the information elicited, the Commission finds that the entity is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous, then the Commission shall issue its finding that the entity is exempt from Commission jurisdiction, and the proceeding shall end. Issuance of the finding shall not preclude another Commission inquiry at a later time if changed circumstances or later-discovered facts warrant another inquiry.

D. If, on the basis of the information elicited, the Commission determines that the entity is subject to Commission jurisdiction, the Commission shall initiate the proceedings, including an Order to Show Cause, as shall be necessary to assert Commission jurisdiction.

KEY: mutual water corporations*, public utilities, water
January 5, 1998 **54-2-1**



End of the 120-Day Rule Section

R746. Public Service Commission, Administration.
R746-331. Determination of Exemption of Mutual Water Corporations.

R746-331-1. Conditions for Finding of Exemption.

A. Upon the Commission's own motion, complaint of a person, or request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine whether an

FIVE-YEAR REVIEW NOTICES OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF CONTINUATION; or amend the rule by filing a PROPOSED RULE and by filing a NOTICE OF CONTINUATION. By filing a NOTICE OF CONTINUATION, the agency indicates that the rule is still necessary.

NOTICES OF CONTINUATION are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules.

NOTICES OF CONTINUATION are effective when filed.

Five-Year Review NOTICES OF CONTINUATION are governed by UTAH CODE Section 63-46a-9 (1996).

Administrative Services, Administration **R13-3** Americans with Disabilities Act Grievance Procedures

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20631
FILED: 01/08/98, 12:16
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is made under authority of Subsections 63A-1-110(2) and 63-46a-3(3). As required by 28 CFR 35.107, the Department of Administrative Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 42 U.S.C. 12201 and 28 CFR Part 35, 1993 edition.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by 28 CFR 35.107. Inasmuch as the Department of Administrative Services is a public entity that employs more than 50 persons, the rule provides for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 and 28 CFR Part 35, 1993 edition.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Administrative Services
Administration
3120 State Office Building
450 N Main St
PO Box 141002
Salt Lake City, UT 84114-1002, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Vicki Schoenfeld at the above address, by phone at (801) 538-3215, by FAX at (801) 538-3844, or Internet E-mail at asitmain.vschoenf@email.state.ut.us.

AUTHORIZED BY: Raylene G. Ireland, Executive Director

EFFECTIVE: 01/08/98



Education, Administration **R277-516** Library Media Certificates and Programs

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20657
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is

authorized under Subsection 53A-1-402(1)(a) which directs the State Board of Education to make rules regarding the certification of educators and ancillary personnel who provide direct student services.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to establish rules regarding the certification of educators and ancillary personnel who provide direct student services.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration

R277-518

Vocational-Technical Certificates

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20658
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH

COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law permits the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration

R277-600

Student Transportation Standards and Procedures

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20659
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1)(e) which directs the State Board of Education to establish rules for bus routes, bus safety, and other transportation needs.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to establish rules for bus routes, bus safety, and other transportation needs.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-605
Extracurricular Student Activities

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20660
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1)(b) which directs the State Board of Education to adopt rules regarding access to programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to adopt rules regarding access to programs.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-606

Interscholastic Competitive Sports in High School

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20661
FILED: 01/14/98, 12:40
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1)(b) which directs the State Board of Education to adopt rules regarding access to programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to adopt rules regarding access to programs.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-610
Released-Time Classes for Religious Instruction

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR File No.: 20662
FILED: 01/14/98, 12:40
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which permits the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law permits the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98

Education, Administration
R277-615
Foreign Exchange Students

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR File No.: 20663
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which permits the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law permits the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98

Education, Administration
R277-700
The Elementary and Secondary School
Core Curriculum and High School
Graduation Requirements

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR File No.: 20664
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1)(b) which directs the State Board of Education to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to make rules regarding

competency levels, graduation requirements, curriculum, and instruction requirements.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-701
Values Education

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20665
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1)(c) which directs the State Board of Education to adopt rules regarding curriculum and instruction.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to adopt rules regarding curriculum and instruction.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-702
Procedures for the Utah General
Educational Development Certificate

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20666
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1)(b) which directs the State Board of Education to adopt rules regarding access to programs, competency levels, and graduation requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to adopt rules regarding access to programs, competency levels, and graduation requirements.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98

Education, Administration

R277-710

Accelerated Learning Programs

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20668
FILED: 01/14/98, 12:40
RECEIVED BY: NL

Education, Administration

R277-709

Education Programs Serving Youth in Custody

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20667
FILED: 01/14/98, 12:40
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which allows the State Board of education to adopt rules in accordance with its responsibilities and Subsection 53A-1-403(1) which gives the State Board of Education direct responsibility for the education of youth in the custody of the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of education to adopt rules in accordance with its responsibilities and gives the State Board of Education direct responsibility for the education of youth in the custody of the state.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 53A-17a-120 which directs the State Board of Education to adopt rules for school districts to follow in utilizing accelerated learning funds.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to adopt rules for school districts to follow in utilizing accelerated learning funds.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98

Education, Administration

R277-716

Alternative Language Services (ALS)

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20669
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-718
Utah Career Teaching Scholarship
Program

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20670
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities and Section 53B-10-101 which permits the State Board of Education and the State Board of Regents to establish criteria, policies, and procedures for administration of the Utah Career Teaching Scholarship.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of Education to adopt rules in accordance with its responsibilities and the law permits the State Board of Education and the State Board of Regents to establish criteria, policies, and procedures for administration of the Utah Career Teaching Scholarship.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-721
Deadline for CACFP Sponsor
Participation in Food Distribution
Program

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20671
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH

COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-730
Alternative High School Curriculum

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20673
FILED: 01/14/98, 12:40
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Education, Administration
R277-722
Withholding Payments and
Commodities in the CACFP

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20672
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1) which directs the State Board of Education to adopt minimum standards for public schools, and Subsection 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law directs the State Board of Education to adopt minimum standards for public schools and allows the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Education, Administration
R277-732
Community Education

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20674
FILED: 01/14/98, 12:40
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53A-1-402(1) which directs the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law allows the State Board of Education to adopt rules in accordance with its responsibilities.

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

Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, School Law Specialist

EFFECTIVE: 01/14/98



Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-4X

Policy Statement on Denial of Payment
to Medicaid Provider When Client Fails
to Keep Scheduled Appointment

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20648
FILED: 01/12/98, 15:26
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-2.1 creates the Division, which is responsible for implementing, organizing, and maintaining the Medicaid program. Section 26-1-5 notes that the Department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Review by Division and Bureaus recommends continuation of this rule. No other comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it puts the provider on notice that billing for services not actually provided is prohibited, and may constitute fraud. No opposing comments were received.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 142906
Salt Lake City, UT 84114-2906, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Blake Anderson at the above address, by phone at (801) 538-9925, by FAX at (801) 538-6099, or Internet E-mail at banderso@email.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/12/98



Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-22

Administrative Sanction Procedures
and Regulations

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20653
FILED: 01/13/98, 15:15
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-2.1 creates the Division, which shall be responsible for implementing, organizing, and maintaining the Medicaid program. Section 26-1-5 notes that the Department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Review by Division and Bureaus recommends continuation of this rule. No other comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it allows the Department to effectively and efficiently operate the Medicaid program, and outlines the consequences for those providers who may abuse or improperly apply the benefit program. No opposing comments were received.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
Box 142906
Salt Lake City, UT 84114-2906, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Robert Stewart at the above address, by phone at (801) 538-6404, by FAX at (801) 538-6099, or Internet E-mail at rstewart@email.state.ut.us.

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/13/98



Human Services, Aging and Adult
Services
R510-100
Funding Formulas

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20634
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq., Section 62A-3-108, and 45 CFR 1321.37 relate to funding formulas for distribution of state and federal funds for: (1) the Older Americans Act, (2) In-Home Services, and (3) Long-Term Care Ombudsman Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments regarding the rule reflect local concerns as to their amount of allocation. The Board balances the conflicting requests for additional dollars based on their determination of need.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The State Board on Aging and Adult Services shall establish by rule a formula for allocating funds to local area agencies on aging to provide programs and services for the aging and aged. This formula shall provide for allocation of funds, based on need. Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or the Board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The formula shall include a differential to compensate for additional costs of providing services in rural areas.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98



Human Services, Aging and Adult Services

R510-101

Carryover Policy for Title III: Grants for State and Community Programs on Aging

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20635
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq., 45 CFR 1321.37, and Section 62A-3-104 relate to the authority of the Division to receive and distribute state and federal funds for Division programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no negative comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides for a local area agency on aging who has federal carryover money at the close of the state fiscal year to have the unspent federal money re-contracted to the area agencies on aging (AAA) in the succeeding state year's contract.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsaadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98



Human Services, Aging and Adult Services

R510-102

Amendments to Area Plan and Management Plan

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20636
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq., and Section 62A-3-104 require the Division to designate planning and service areas and develop program plans.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no negative comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Area Agencies on Aging (AAA) must submit area plan amendments for approval by the Division.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsaadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98



Human Services, Aging and Adult Services

R510-103

Use of Senior Centers by Long Term Care Facility Residents and Senior Citizens' Groups Participating in Activities Outside Their Planning and Service Area

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20637
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-3-4 and 42 U.S.C. 3001 et seq. authorize this rule. Under the legal statute, the Division of Aging and Adult Services has the responsibilities to promulgate rules affecting advocacy, monitoring, evaluation, technical assistance, and public education which enhances the quality of life for aging and adult citizens of the State.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: To define access to the services, programs, education and training at the senior centers by other groups who desire to participate in these senior center activities.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98

Human Services, Aging and Adult Services

R510-106

Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20638
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq. and Section 62A-3-101 et seq. require the Division to promulgate rules governing minimum percentage.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No negative comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Older Americans Act requires that the state set a minimum percent of funds to be designated for access, in-home and legal assistance. These percentages should be reviewed periodically.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98

Human Services, Aging and Adult Services
R510-107
Title V Senior Community Service Employment Program Standards and Procedures

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20639
FILED: 01/08/98, 17:08
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq., Section 62A-3-104, and 20 CFR 641 give the Division the authority to develop programs for the aging population.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No negative comments.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This is a federal program which enables older individuals the opportunity for training to become gainfully employed and employment while they are acquiring the experience and skills necessary to be marketable in the current labor market. There are increasing numbers of elderly who need to either re-enter the workforce or begin a career.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98



Human Services, Aging and Adult Services
R510-108
Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20640
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq. and Section 62A-3-104 require the Division to submit reports on rural programs and define rural.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No negative comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Older Americans Act periodically refers to service to rural areas. The State defines what the definition of rural constitutes.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98



Human Services, Aging and Adult Services

R510-109

Definition of Significant Population of Older Native Americans

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20641
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq. and Section 62A-3-104 require the Division to develop and report on programs for seniors.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No negative comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Older Americans Act allows states to set the definition for a "significant population of older Native Americans" within a planning and service area.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsdadmin.hsdadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98

Human Services, Aging and Adult Services

R510-110

Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20642
FILED: 01/08/98, 17:08
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NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 42 U.S.C. 3001 et seq. and Section 62A-3-104 require the Division to provide services through contractual arrangements.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No negative comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As the percentage of older individuals grows larger, more private companies are interested in providing ElderCare services. The Area Agencies on Aging may enter into contracts with private corporations but they need to assure the Division that there is no conflict of interest and the area agency maintains its statutory responsibilities, full cost of services is charged for the contracted services, and state and federal funds will not be used to supplement third-party payments made by a corporation under a contract covered by this policy.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsdadmin.hsdadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98

EFFECTIVE: 01/08/98

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**Human Services, Aging and Adult
Services**
R510-200
**Long-Term Care Ombudsman Program
Policy**

◆ ————— ◆

**Human Services, Aging and Adult
Services**
R510-400
**Home and Community-Based
Alternatives Services Policy and
Procedures**

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20643
FILED: 01/08/98, 17:08
RECEIVED BY: NL

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE No.: 20644
FILED: 01/08/98, 17:08
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-3-201 requires the Division to establish and operate an Office of the Long-Term Care Ombudsman.

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-3-104 requires and gives the Division the authority to establish and operate programs to serve the needs of seniors.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments received after the rule was enacted came from the area agency on aging directors and case managers. All comments were positive toward the rule. They liked the ease of locating provisions, the concise wording and the consolidation of activities into specific sections.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Frail and elderly residents living in long-term care facilities have specialized needs and problems related to their health, safety, welfare, and rights. The Long-Term Care Ombudsman Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the State.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division and its contractors feel that this rule allows for the provision and implementation of essential services to frail adults and elderly who, without these services, would not have the ability to remain in their own homes.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

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

Human Services
Aging and Adult Services
Room 325, Human Services Building
120 North 200 West
PO Box 45500
Salt Lake City, UT 84145-0500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

DIRECT QUESTIONS REGARDING THIS FILING TO:
Sally Anne Brown at the above address, by phone at (801) 538-3910, by FAX at (801) 538-4395, or Internet E-mail at hsadmin.hsadm2.sbrown@email.state.ut.us.

AUTHORIZED BY: Helen Goddard, Director

AUTHORIZED BY: Helen Goddard, Director

EFFECTIVE: 01/08/98

Transportation, Motor Carrier, Ports of Entry

R912-4

Limitation of Special Permit Vehicles in Provo Canyon. Legal and Permitted Vehicles

Human Services, Recovery Services

R527-3

Definitions

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20647
FILED: 01/12/98, 09:25
RECEIVED BY: NL

FIVE-YEAR REVIEW NOTICE OF CONTINUATION

DAR FILE NO.: 20646
FILED: 01/12/98, 08:17
RECEIVED BY: NL

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Sections 62A-11-103, 62A-11-202, 62A-11-303, and 62A-11-404 which contain definitions of terms for the Office of Recovery Services, the Administrative Determination of Overpayments Act, the Public Support of Children Act, and Income Withholding in IV-D and non IV-D cases. This rule provides definitions of additional terms used by the Office of Recovery Services in its various programs which are either not mentioned or not precisely defined in these statutes.

NOTICE AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 27-12-7 states that in carrying out the general policy of the state relating to state highways, the Department of Transportation shall exercise control over the construction and maintenance of the state highways. Sections 27-12-145 through 27-12-157 state that the Department may deny or issue a permit, to protect the safety of the traveling public and to protect highway foundation, surfaces, or structures from undue damage.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

SUMMARY OF WRITTEN COMMENTS RECEIVED AFTER ENACTMENT OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule so that terms not specified in the Utah Code that relate to the Office of Recovery Services or its programs are available to the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule has been effective in minimizing the effects of trucks traveling through the Provo Canyon while not entirely banning all trucks from using this canyon. Environmental issues remain concerning the Provo River and the canyon itself.

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

Human Services
Recovery Services
Fourteenth Floor, Eaton/Kenway Bldg
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145-0011, or
at the Division of Administrative Rules.

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

Transportation
Motor Carrier, Ports of Entry
Calvin Rampton Building
4501 South 2700 West
Box 141210
Salt Lake City, UT 84114-1210, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO: Wayne Braithwaite at the above address, by phone at (801) 536-8986, by FAX at (801) 536-8509, or Internet E-mail at hsdadmin.hsorssl.c.wbraithw@email.state.ut.us.

DIRECT QUESTIONS REGARDING THIS FILING TO: Tamy L. Scott at the above address, by phone at (801) 965-4752, by FAX at (801) 965-4847, or Internet E-mail at src0fs02.tscott@email.state.ut.us.

AUTHORIZED BY: Emma Chacon, Director

AUTHORIZED BY: Tamy L. Scott, Transportation Safety Investigator

EFFECTIVE: 01/12/98

EFFECTIVE: 01/12/98

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food

Animal Industry

No. 20279 (NEW): R58-19. Compliance Procedures.
Published: December 15, 1997
Effective: January 15, 1998

Plant Industry

No. 20280 (NEW): R68-19. Compliance Procedures.
Published: December 15, 1997
Effective: January 15, 1998

Regulatory Services

No. 20281 (NEW): R70-201. Compliance Procedures.
Published: December 15, 1997
Effective: January 15, 1998

Commerce

Occupational and Professional Licensing

No. 20273 (AMD): R156-60d. Substance Abuse Counselor Act Rules.
Published: December 15, 1997
Effective: January 15, 1998

Community and Economic Development

Community Development, Community Services

No. 20282 (AMD): R202-100. Community Services Block Grant Rules.
Published: December 15, 1997
Effective: January 15, 1998

Corrections

Administration

No. 20160 (AMD): R251-107. Executions.
Published: November 15, 1997
Effective: January 15, 1998

No. 20196 (AMD): R251-703. Vehicle Direction Station.
Published: December 1, 1997
Effective: January 15, 1998

No. 20198 (AMD): R251-707. Legal Access.
Published: December 1, 1997
Effective: January 15, 1998

Environmental Quality

Air Quality

No. 20096 (AMD): R307-1-1. Foreword and Definitions.
Published: November 1, 1997
Effective: January 8, 1998

No. 20202 (AMD): R307-1-1. Foreword and Definitions.
Published: December 1, 1997
Effective: January 8, 1998

No. 20099 (AMD): R307-2-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.
Published: November 1, 1997
Effective: January 8, 1998

No. 20100 (AMD): R307-8-3. Average Oxygen Content Standard.
Published: November 1, 1997
Effective: January 8, 1998

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 20232 (AMD): R414-15. Patients Personal Needs Fund.
Published: December 1, 1997
Effective: January 13, 1998

No. 20212 (REP): R414-17. Policy on Use of Oxygen Concentrators.
Published: December 1, 1997
Effective: January 13, 1998

Health Systems Improvement, Child Care Licensing

No. 20265 (NEW): R430-3. General Care Facility Rules Inspection and Enforcement.
Published: December 15, 1997
Effective: January 21, 1998

No. 20267 (NEW): R430-6. Background Screening.
Published: December 15, 1997
Effective: January 20, 1998

No. 20268 (NEW): R430-30. Adjudicative Procedure.
Published: December 15, 1997
Effective: January 21, 1998

Natural Resources

Administration

No. 20256 (NEW): R634-1. Americans With Disabilities Complaint Procedure.
Published: December 15, 1997
Effective: January 15, 1998

(DAR Note: Correction notice - this effective notice was published in the January 1, 1998, *Bulletin*, as being effective December 12, 1997. That was incorrect (see Editor's Notes in this *Bulletin*). The correct date is December 16, 1997.)

Oil, Gas and Mining; Abandoned Mine Reclamation

No. 19729 (CPR): R643-870. Abandoned Mine Reclamation Regulation Definitions.
Published: November 15, 1997
Effective: December 16, 1997

Wildlife Resources

No. 20241 (AMD): R657-5. Taking Big Game.
Published: December 15, 1997
Effective: January 15, 1998

No. 20243 (AMD): R657-37. Cooperative Wildlife Management Units for Big Game.
Published: December 15, 1997
Effective: January 15, 1998

End of the Rule Effective Dates Section

No. 20244 (AMD): R657-38. Dedicated Hunter Program.
Published: December 15, 1997
Effective: January 15, 1998

Public Safety

Fire Marshal

No. 20277 (AMD): R710-7. Concerns Servicing Automatic Fire Suppression Systems.
Published: December 15, 1997
Effective: January 15, 1998

No. 20278 (AMD): R710-9. Rules Pursuant to the Utah Fire Prevention Law.
Published: December 15, 1997
Effective: January 15, 1998

Transportation

Motor Carrier

No. 20276 (AMD): R909-1. Safety Regulations for Motor Carriers.
Published: December 15, 1997
Effective: January 15, 1998

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all changes to Utah's administrative rules from January 2, 1998, to the present (current as of January 22, 1998). The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

NOTE: A copy of the indexes is available for public inspection at the Division of Administrative Rules. The indexes may also be obtained by calling UtahBBS, the State of Utah's Bulletin Board System, at (801) 538-3383, or toll-free within Utah at (800) 882-4638. A computer, a modem, and a communications software package are required to access UtahBBS. Set communications software to 8 data bits, no parity, and 1 stop bit. The indexes are located under the "Administrative Rules Conference" (conference 9), in the "Indexes--Current" option (7).

UtahBBS may also be accessed over the Internet with a telnet client (the client must support download capabilities if downloading information is desired), or with a World Wide Web client (such as Mosaic or Netscape). The telnet address is bbs.state.ut.us; the web address is <http://web.state.ut.us/its/bbs.htm>.

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

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5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-3	Americans with Disabilities Act Procedures	20631	5YR	01/08/98	98-3/89
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-19	Compliance Procedures	20279	NEW	01/05/98	97-24/12
<u>Plant Industry</u>					
R68-19	Compliance Procedures	20280	NEW	01/15/98	97-24/13
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	20281	NEW	01/15/98	97-24/14

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
COMMERCE					
<u>Occupational and Professional Licensing</u>					
R156-60d	Substance Abuse Counselor Act Rules	20273	AMD	01/15/98	97-24/16
COMMUNITY AND ECONOMIC DEVELOPMENT					
<u>Community Development, Community Services</u>					
R202-100	Community Services Block Grant Rules	20282	AMD	01/15/98	97-24/17
CORRECTIONS					
<u>Administration</u>					
R251-107	Executions	20160	AMD	01/15/98	97-22/16
R251-703	Vehicle Direction Station	20196	AMD	01/15/98	97-23/6
R251-707	Legal Access	20198	AMD	01/15/98	97-23/8
EDUCATION					
<u>Administration</u>					
R277-516	Library Media Certificates and Programs	20657	5YR	01/14/98	98-3/89
R277-518	Vocational-Technical Certificates	20658	5YR	01/14/98	98-3/90
R277-600	Student Transportation Standards and Policies	20659	5YR	01/14/98	98-3/90
R277-605	Extracurricular Student Activities	20660	5YR	01/14/98	98-3/91
R277-606	Interschool Competitive Sports in High School	20661	5YR	01/14/98	98-3/91
R277-610	Released-Time Classes for Religious Instruction	20662	5YR	01/14/98	98-3/91
R277-615	Foreign Exchange Students	20663	5YR	01/14/98	98-3/92
R277-700	The Elementary and Secondary School Core Curriculum and High School Graduation Requirements	20664	5YR	01/14/98	98-3/92
R277-701	Values Education	20665	5YR	01/14/98	98-3/93
R277-702	Procedures for the Utah General Educational Developmental Certificate	20666	5YR	01/14/98	98-3/93
R277-709	Education Programs Serving Youth in Custody	20667	5YR	01/14/98	98-3/94
R277-710	Accelerated Learning Programs	20668	5YR	01/14/98	98-3/94
R277-716	Alternative Language Services (ALS)	20669	5YR	01/14/98	98-3/94
R277-718	Utah Career Teaching Scholarship Program	20670	5YR	01/14/98	98-3/95
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	20671	5YR	01/14/98	98-3/95
R277-722	Withholding Payments and Commodities in the CACFP	20672	5YR	01/14/98	98-3/96
R277-730	Alternative High School Curriculum	20673	5YR	01/14/98	98-3/96
R277-732	Community Education	20674	5YR	01/14/98	98-3/97
ENVIRONMENTAL QUALITY					
<u>Air Quality</u>					
R307-1-1	Foreword and Definitions	20096	AMD	01/08/98	97-21/4
R307-1-1	Foreword and Definitions	20202	AMD	01/08/98	97-23/10
R307-2-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	20099	AMD	01/08/98	97-21/14

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R307-8-3	Average Oxygen Content Standard	20100	AMD	01/08/98	97-21/15
<u>Solid and Hazardous Waste</u>					
R315-301-2	Definitions	19876	AMD	see CPR	97-19/23
R315-301-2	Definitions	19876	CPR	01/05/98	97-23/111
HEALTH					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-4X	Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment	20648	5YR	01/12/98	98-3/97
R414-15	Patients Personal Needs Fund	20232	AMD	01/13/98	97-23/80
R414-17	Policy on Use of Oxygen Concentrators	20212	REP	01/13/98	97-23/82
R414-22	Administrative Sanction Procedures and Regulations	20653	5YR	01/13/98	98-3/97
<u>Health Systems Improvement, Child Care Licensing</u>					
R430-3	General Care Facility Rules Inspection and Enforcement	20265	NEW	01/21/98	97-24/69
R430-6	Background	20267	NEW	01/20/98	97-24/75
R430-10	Notice of Intent to License, Hourly Care Provider	20645	EMR	01/09/98	98-3/86
R430-30	Adjudicative Procedure	20268	NEW	01/21/98	97-24/79
HUMAN SERVICES					
<u>Aging and Adult Services</u>					
R510-100	Funding Formulas	20634	5YR	01/08/98	98-3/98
R510-101	Carryover Policy for Title III: Grants for State and Community Programs on Aging	20635	5YR	01/08/98	98-3/99
R510-102	Amendments to Area Plan and Management Plan	20636	5YR	01/08/98	98-3/99
R510-103	Use of Senior Centers by Long Term Care Facility Residents and Senior Citizens' Groups Participating in Activities Outside Their Planning and Service Area	20637	5YR	01/08/98	98-3/100
R510-106	Minimum Percentage of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance	20638	5YR	01/08/98	98-3/100
R510-107	Title V Senior Community Service Employment Program Standards and Procedures	20639	5YR	01/08/98	98-3/101
R510-108	Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act	20640	5YR	01/08/98	98-3/101
R510-109	Definition of Significant Population of Older Native Americans	20641	5YR	01/08/98	98-3/102
R510-110	Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services	20642	5YR	01/08/98	98-3/102
R510-200	Long-Term Care Ombudsman Program Policy	20643	5YR	01/08/98	98-3/103

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R510-400	Home and Community-Based Alternative Services Policy and Procedures	20644	5YR	01/08/98	98-3/103
<u>Recovery Services</u>					
R527-3	Definitions	20647	5YR	01/12/98	98-3/104
R527-5	Release of Information	20240	AMD	01/05/98	97-23/83
NATURAL RESOURCES					
<u>Administration</u>					
R634-1	Americans With Disabilities Complaint Procedure	20256	NEW	01/15/98	97-24/92
<u>Wildlife Resources</u>					
R657-5	Taking Big Game	20241	AMD	01/15/98	97-24/95
R657-37	Cooperative Wildlife Management Units for Big Game	20243	AMD	01/15/98	97-24/104
R657-38	Dedicated Hunter Program	20244	AMD	01/15/98	97-24/105
PUBLIC SAFETY					
<u>Fire Marshal</u>					
R710-7	Concerns Servicing Automatic Fire Suppression Systems	20277	AMD	01/15/98	97-24/108
R710-9	Rules Pursuant to the Utah Fire Prevention Law	20278	AMD	01/15/98	97-24/109
PUBLIC SERVICE COMMISSION					
<u>Administration</u>					
R746-331	Determination of Exemption of Mutual Water Corporations	20626	EMR	01/05/98	98-3/87
TAX COMMISSION					
<u>Property Tax</u>					
R884-24P-7	Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201	20177	AMD	01/06/98	97-22/75
TRANSPORTATION					
<u>Motor Carrier</u>					
R909-1	Safety Regulations for Motor Carriers	20276	AMD	01/15/98	97-24/111
<u>Motor Carrier, Ports of Entry</u>					
R912-4	Limitation of Special Permit Vehicles in Provo Canyon. Legal and Permitted Vehicles	20646	5YR	01/12/98	98-3/104
WORKFORCE SERVICES					
<u>Employment Development</u>					
R986-302	Eligibility Requirements	20224	AMD	01/02/98	97-23/97
R986-412	Conditions of Eligibility	20206	AMD	01/02/98	97-23/98
R986-414	Income	20207	AMD	01/02/98	97-23/99

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R986-417	Documentation	20208	AMD	01/02/98	97-23/100
R986-419	Income Limits	20209	AMD	01/02/98	97-23/102
R986-420	Maximum Allotments	20210	AMD	01/02/98	97-23/102
R986-421	Demonstration Programs	20211	AMD	01/02/98	97-23/103

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<u>KEYWORD AGENCY</u>	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>ACCREDITATION</u>					
Education, Administration	20657	R277-516	5YR	01/14/98	98-3/89
<u>ADULT EDUCATION</u>					
Education, Administration	20666	R277-702	5YR	01/14/98	98-3/93
<u>AGRICULTURAL LAW</u>					
Agriculture and Food, Animal Industry	20279	R58-19	NEW	01/15/98	97-24/12
Agriculture and Food, Plant Industry	20280	R68-19	NEW	01/15/98	97-24/13
Agriculture and Food, Regulatory Services	20281	R70-201	NEW	01/15/98	97-24/14
<u>AIR POLLUTION</u>					
Environmental Quality, Air Quality	20096	R307-1-1	AMD	01/08/98	97-21/4
	20202	R307-1-1	AMD	01/08/98	97-23/10
	20099	R307-2-12	AMD	01/08/98	97-21/14
	20100	R307-8-3	AMD	01/08/98	97-21/15
<u>ALTERNATIVE LANGUAGE SERVICES</u>					
Education, Administration	20669	R277-716	5YR	01/14/98	98-3/94
<u>ALTERNATIVE SCHOOL</u>					
Education, Administration	20673	R277-730	5YR	01/14/98	98-3/96
<u>ANTIPOVERTY PROGRAMS</u>					
Community and Economic Development, Community Development, Community Services	20282	R202-100	AMD	01/15/98	97-24/17

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>BENEFITS</u>					
Workforce Services, Employment Development	20224	R986-302	AMD	01/02/98	97-23/97
	20208	R986-417	AMD	01/02/98	97-23/100
<u>BIG GAME SEASONS</u>					
Natural Resources, Wildlife Resources	20241	R657-5	AMD	01/15/98	97-24/95
<u>CAREER EDUCATION</u>					
Education, Administration	20670	R277-718	5YR	01/14/98	98-3/95
<u>CARRYOVER FUNDING</u>					
Human Services, Aging and Adult Services	20635	R510-101	5YR	01/08/98	98-3/99
<u>CHILD CARE FACILITIES</u>					
Health, Health Systems Improvement, Child Care Licensing	20265	R430-3	NEW	01/21/98	97-24/69
	20267	R430-6	NEW	01/20/98	97-24/75
	20645	R430-10	EMR	01/09/98	98-3/86
	20268	R430-30	NEW	01/21/98	97-24/79
<u>CHILD SUPPORT</u>					
Human Services, Recovery Services	20647	R527-3	5YR	01/12/98	98-3/104
	20240	R527-5	AMD	01/05/98	97-23/83
<u>CIVIL RIGHTS</u>					
Natural Resources, Administration	20256	R634-1	NEW	01/15/98	97-24/92
<u>COMMUNITY ACTION PROGRAMS</u>					
Community and Economic Development, Community Development, Community Services	20282	R202-100	AMD	01/15/98	97-24/17
<u>COMMUNITY SCHOOLS</u>					
Education, Administration	20674	R277-732	5YR	01/14/98	98-3/97
<u>CONFIDENTIALITY</u>					
Human Services, Recovery Services	20240	R527-5	AMD	01/05/98	97-23/83
<u>COOPERATIVE WILDLIFE MANAGEMENT UNIT</u>					
Natural Resources, Wildlife Resources	20243	R657-37	AMD	01/15/98	97-24/104
<u>CORRECTIONS</u>					
Corrections, Administration	20160	R251-107	AMD	01/15/98	97-22/16
	20198	R251-707	AMD	01/15/98	97-23/8
<u>CURRICULA</u>					
Education, Administration	20664	R277-700	5YR	01/14/98	98-3/92
	20665	R277-701	5YR	01/14/98	98-3/93
<u>DEMONSTRATION</u>					
Workforce Services, Employment Development	20208	R986-417	AMD	01/02/98	97-23/100
<u>DISABLED PERSONS</u>					
Administrative Services, Administration	20631	R13-3	5YR	01/08/98	98-3/89
<u>EDUCATION</u>					
Education, Administration	20665	R277-701	5YR	01/14/98	98-3/93
	20667	R277-709	5YR	01/14/98	98-3/94

RULES INDEX

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	20670	R277-718	5YR	01/14/98	98-3/95
	20673	R277-730	5YR	01/14/98	98-3/96
<u>EDUCATIONAL TESTING</u>					
Education, Administration	20666	R277-702	5YR	01/14/98	98-3/93
<u>ELDERCARE</u>					
Human Services, Aging and Adult Services	20642	R510-110	5YR	01/08/98	98-3/102
<u>ELDERLY</u>					
Human Services, Aging and Adult Services	20634	R510-100	5YR	01/08/98	98-3/98
	20635	R510-101	5YR	01/08/98	98-3/99
	20636	R510-102	5YR	01/08/98	98-3/99
	20637	R510-103	5YR	01/08/98	98-3/100
	20638	R510-106	5YR	01/08/98	98-3/100
	20639	R510-107	5YR	01/08/98	98-3/101
	20640	R510-108	5YR	01/08/98	98-3/101
	20641	R510-109	5YR	01/08/98	98-3/102
	20643	R510-200	5YR	01/08/98	98-3/103
	20644	R510-400	5YR	01/08/98	98-3/103
<u>EMPLOYMENT</u>					
Human Services, Aging and Adult Services	20639	R510-107	5YR	01/08/98	98-3/101
<u>ENVIRONMENTAL PROTECTION</u>					
Environmental Quality, Air Quality	20099	R307-2-12	AMD	01/08/98	97-21/14
<u>ETHICS</u>					
Natural Resources, Wildlife Resources	20244	R657-38	AMD	01/15/98	97-24/105
<u>EXCEPTIONAL CHILDREN</u>					
Education, Administration	20668	R277-710	5YR	01/14/98	98-3/94
<u>EXECUTIONS</u>					
Corrections, Administration	20160	R251-107	AMD	01/15/98	97-22/16
<u>EXTRACURRICULAR ACTIVITIES</u>					
Education, Administration	20660	R277-605	5YR	01/14/98	98-3/91
	20661	R277-606	5YR	01/14/98	98-3/91
<u>FIRE PREVENTION</u>					
Public Safety, Fire Marshal	20277	R710-7	AMD	01/15/98	97-24/108
	20278	R710-9	AMD	01/15/98	97-24/109
<u>FOOD AID PROGRAMS</u>					
Education, Administration	20671	R277-721	5YR	01/14/98	98-3/95
	20672	R277-722	5YR	01/14/98	98-3/96
<u>FOOD SALES TAX REFUNDS</u>					
Community and Economic Development, Community Development, Community Services	20282	R202-100	AMD	01/15/98	97-24/17
<u>FOOD STAMPS</u>					
Workforce Services, Employment Development	20208	R986-417	AMD	01/02/98	97-23/100
	20209	R986-419	AMD	01/02/98	97-23/102

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	20210	R986-420	AMD	01/02/98	97-23/102
<u>FOREIGN STUDENTS</u>					
Education, Administration	20663	R277-615	5YR	01/14/98	98-3/92
<u>FUNDING FORMULA</u>					
Human Services, Aging and Adult Services	20634	R510-100	5YR	01/08/98	98-3/98
<u>GAME LAWS</u>					
Natural Resources, Wildlife Resources	20241	R657-5	AMD	01/15/98	97-24/95
<u>GASOLINE</u>					
Environmental Quality, Air Quality	20100	R307-8-3	AMD	01/08/98	97-21/15
<u>GIFTED CHILDREN</u>					
Education, Administration	20668	R277-710	5YR	01/14/98	98-3/94
<u>GRANTS</u>					
Community and Economic Development, Community Development, Community Services	20282	R202-100	AMD	01/15/98	97-24/17
<u>GRIEVANCE PROCEDURES</u>					
Administrative Services, Administration	20631	R13-3	5YR	01/08/98	98-3/89
<u>HOME CARE SERVICES</u>					
Human Services, Aging and Adult Services	20644	R510-400	5YR	01/08/98	98-3/103
<u>HUNTING</u>					
Natural Resources, Wildlife Resources	20244	R657-38	AMD	01/15/98	97-24/105
<u>INCOME</u>					
Workforce Services, Employment Development	20224	R986-302	AMD	01/02/98	97-23/97
	20207	R986-414	AMD	01/02/98	97-23/99
	20211	R986-421	AMD	01/02/98	97-23/103
<u>JUVENILE COURTS</u>					
Education, Administration	20667	R277-709	5YR	01/14/98	98-3/94
<u>LAW</u>					
Public Safety, Fire Marshal	20278	R710-9	AMD	01/15/98	97-24/109
<u>LEGAL AID</u>					
Corrections, Administration	20198	R251-707	AMD	01/15/98	97-23/8
<u>LIBERTIES</u>					
Natural Resources, Administration	20256	R634-1	NEW	01/15/98	97-24/92
<u>LIBRARIES</u>					
Education, Administration	20657	R277-516	5YR	01/14/98	98-3/89
<u>LICENSING</u>					
Commerce, Occupational and Professional Licensing	20273	R156-60d	AMD	01/15/98	97-24/16
<u>LONG-TERM CARE ALTERNATIVES</u>					
Human Services, Aging and Adult Services	20644	R510-400	5YR	01/08/98	98-3/103
<u>LONG-TERM CARE OMBUDSMAN</u>					
Human Services, Aging and Adult Services	20634	R510-100	5YR	01/08/98	98-3/98

RULES INDEX

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>MAJOR SOURCES</u>					
Environmental Quality, Air Quality	20096	R307-1-1	AMD	01/08/98	97-21/4
	20202	R307-1-1	AMD	01/08/98	97-23/10
<u>MEDICAID</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	20648	R414-4X	5YR	01/12/98	98-3/97
	20232	R414-15	AMD	01/13/98	97-23/80
	20212	R414-17	REP	01/13/98	97-23/82
	20653	R414-22	5YR	01/13/98	98-3/97
<u>MOTOR VEHICLES</u>					
Environmental Quality, Air Quality	20096	R307-1-1	AMD	01/08/98	97-21/4
	20202	R307-1-1	AMD	01/08/98	97-23/10
	20100	R307-8-3	AMD	01/08/98	97-21/15
<u>MUTUAL WATER CORPORATIONS</u>					
Public Service Commission, Administration	20626	R746-331	EMR	01/05/98	98-3/87
<u>NATIVE AMERICAN</u>					
Human Services, Aging and Adult Services	20641	R510-109	5YR	01/08/98	98-3/102
<u>NURSING HOMES</u>					
Human Services, Aging and Adult Services	20637	R510-103	5YR	01/08/98	98-3/100
<u>OMBUDSMAN</u>					
Human Services, Aging and Adult Services	20643	R510-200	5YR	01/08/98	98-3/103
<u>OVERSIZE/OVERWEIGHT TRUCKS</u>					
Transportation, Motor Carrier, Ports of Entry	20646	R912-4	5YR	01/12/98	98-3/104
<u>PARTICULATE MATTER</u>					
Environmental Quality, Air Quality	20099	R307-2-12	AMD	01/08/98	97-21/14
<u>PERMITS</u>					
Transportation, Motor Carrier, Ports of Entry	20646	R912-4	5YR	01/12/98	98-3/104
<u>PETROLEUM</u>					
Environmental Quality, Air Quality	20100	R307-8-3	AMD	01/08/98	97-21/15
<u>POPULATION</u>					
Human Services, Aging and Adult Services	20641	R510-109	5YR	01/08/98	98-3/102
<u>PRISONS</u>					
Corrections, Administration	20160	R251-107	AMD	01/15/98	97-22/16
	20196	R251-703	AMD	01/15/98	97-23/6
	20198	R251-707	AMD	01/15/98	97-23/8
<u>PRIVACY LAW</u>					
Human Services, Recovery Services	20240	R527-5	AMD	01/05/98	97-23/83
<u>PROFESSIONAL COMPETENCY</u>					
Education, Administration	20657	R277-516	5YR	01/14/98	98-3/89

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>PROFESSIONAL EDUCATION</u>					
Education, Administration	20658	R277-518	5YR	01/14/98	98-3/90
<u>PUBLIC EDUCATION</u>					
Education, Administration	20669	R277-716	5YR	01/14/98	98-3/94
<u>PUBLIC UTILITIES</u>					
Public Service Commission, Administration	20626	R746-331	EMR	01/05/98	98-3/87
<u>RECREATION</u>					
Natural Resources, Wildlife Resources	20244	R657-38	AMD	01/15/98	97-24/105
<u>RELIGIOUS EDUCATION</u>					
Education, Administration	20662	R277-610	5YR	01/14/98	98-3/91
<u>RURAL POLICY</u>					
Human Services, Aging and Adult Services	20640	R510-108	5YR	01/08/98	98-3/101
<u>SAFETY REGULATION</u>					
Transportation, Motor Carrier, Ports of Entry	20646	R912-4	5YR	01/12/98	98-3/104
<u>SCHOOL BUSES</u>					
Education, Administration	20659	R277-600	5YR	01/14/98	98-3/90
<u>SCHOOL PERSONNEL</u>					
Education, Administration	20657	R277-516	5YR	01/14/98	98-3/89
<u>SCHOOL TRANSPORTATION</u>					
Education, Administration	20659	R277-600	5YR	01/14/98	98-3/90
<u>SENIOR CENTERS</u>					
Human Services, Aging and Adult Services	20637	R510-103	5YR	01/08/98	98-3/100
<u>SERVICE COORDINATION</u>					
Human Services, Aging and Adult Services	20636	R510-102	5YR	01/08/98	98-3/99
<u>SMALL BUSINESS ASSISTANCE PROGRAM</u>					
Environmental Quality, Air Quality	20099	R307-2-12	AMD	01/08/98	97-21/14
<u>SOCIAL SECURITY</u>					
Workforce Services, Employment Development	20206	R986-412	AMD	01/02/98	97-23/98
<u>SOLID WASTE MANAGEMENT</u>					
Environmental Quality, Solid and Hazardous Waste	19876	R315-301-2	AMD	see CPR	97-19/23
	19876	R315-301-2	CPR	01/05/98	97-23/111
<u>STUDENT COMPETENCY</u>					
Education, Administration	20666	R277-702	5YR	01/14/98	98-3/93
<u>STUDENT FINANCIAL AID</u>					
Education, Administration	20670	R277-718	5YR	01/14/98	98-3/95
<u>STUDENTS</u>					
Education, Administration	20667	R277-709	5YR	01/14/98	98-3/94
<u>SUBSTANCE ABUSE COUNSELORS</u>					
Commerce, Occupational and Professional Licensing	20273	R156-60d	AMD	01/15/98	97-24/16

RULES INDEX

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>SYSTEMS</u>					
Public Safety, Fire Marshal	20277	R710-7	AMD	01/15/98	97-24/108
<u>TAXATION</u>					
Tax Commission, Property Tax	20177	R884-24P-7	AMD	01/06/98	97-22/75
<u>TEACHER CERTIFICATION</u>					
Education, Administration	20658	R277-518	5YR	01/14/98	98-3/90
<u>TRANSPORTATION SAFETY</u>					
Transportation, Motor Carrier	20276	R909-1	AMD	01/15/98	97-24/111
<u>TRUCKS</u>					
Transportation, Motor Carrier	20276	R909-1	AMD	01/15/98	97-24/111
<u>VOCATIONAL EDUCATION</u>					
Education, Administration	20658	R277-518	5YR	01/14/98	98-3/90
<u>WASTE DISPOSAL</u>					
Environmental Quality, Solid and Hazardous Waste	19876	R315-301-2	AMD	see CPR	97-19/23
	19876	R315-301-2	CPR	01/05/98	97-23/111
<u>WATER</u>					
Public Service Commission, Administration	20626	R746-331	EMR	01/05/98	98-3/87
<u>WELFARE</u>					
Human Services, Recovery Services	20647	R527-3	5YR	01/12/98	98-3/104
<u>WILDLIFE</u>					
Natural Resources, Wildlife Resources	20241	R657-3	AMD	01/15/98	97-24/95
	20243	R657-37	AMD	01/15/98	97-24/104
	20244	R657-38	AMD	01/15/98	97-24/105