

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed December 16, 1998 12:00 a.m. through December 31, 1998 11:59 p.m.

Number 99-2
January 15, 1999

Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

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. To view rules information, and on-line versions of these publications, visit the division's web site at: <http://www.rules.state.ut.us/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Bulletin* and *Digest* are printed and distributed semi-monthly by Legislative Printing. Annual subscription rates (24 issues) are \$150 for the *Bulletin* and \$35 for the *Digest*. Inquiries concerning subscription, billing, or changes of address should be addressed to:

LEGISLATIVE PRINTING
PO BOX 140107
SALT LAKE CITY, UT 84114-0107
(801) 538-1103
FAX (801) 538-1728

ISSN 0882-4738

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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 December 16, 1998, 12:00 a.m., and December 31, 1998, 11:59 p.m., are included in this, the January 15, 1999, 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 Rules being repealed are completely struck out.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 February 16, 1999. 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 May 15, 1999, 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.

The Proposed Rules Begin on the Following Page.

**Administrative Services, Records
Committee
R35-1
State Records Committee Appeal
Hearing Procedures**

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21751

FILED: 12/18/1998, 13:50

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To provide guidelines regarding format for which appeal hearings before the State Records Committee will be conducted.

SUMMARY OF THE RULE OR CHANGE: Rule R35-1 outlines the procedures followed during appeal hearings held before the State Records Committee. Section R35-1-1 outlines the procedures followed by the executive secretary of the committee when scheduling appeal hearings. Section R35-1-2 outlines the procedures followed by the Committee during the appeal hearing. Section R35-1-3 outlines the procedure followed in issuing and maintaining the Committee's decision and orders. Section R35-1-4 outlines the procedure for maintaining Committee minutes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This rule will not affect the current process followed during the appeal hearings. The State Archives determines that this rule will not create any cost or savings impact to the state budget or the State Archives budget.

❖LOCAL GOVERNMENTS: None--this filing does not create any direct cost or savings impact to local governments. Local governments will not be impacted since this rule does not create any requirements or services from local governments. This rule will not affect the current process followed during the appeal process.

❖OTHER PERSONS: No impact--this rule does not impose any requirements or burdens on persons. This rule will not affect the current process followed during the appeal process. The general public will not be impacted since this rule does not create any requirements or services from the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--this rule does not impose any requirements or burdens on persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create any impact on businesses--Raylene Ireland.

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

Administrative Services
Records Committee
Utah State Archives
Box 141021
Salt Lake City, UT 84114-1021, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jannette S. Goodall at the above address, by phone at (801) 538-3052, by FAX at (801) 538-3354, or by Internet E-mail at asitmain.jgoodall@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 02/16/1999, 1:30 p.m., Utah State Archives, Archives Building, Room 205, Salt Lake City, UT 84114-1021.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Jeffery O. Johnson, State Archivist

R35. Administrative Services, Records Committee.**R35-1. State Records Committee Appeal Hearing Procedures.****R35-1-1. Scheduling Committee Meetings.**

(1) The Executive Secretary shall respond in writing to the notice of appeal within 3 business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall send a notice of the meeting to at least one newspaper of general circulation within the geographic jurisdiction.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the evidence presented and the witnesses by Committee members shall be permitted.

(6) The Committee may view documents in camera.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) Committee deliberations.

(a) Following deliberations, a motion to grant in whole or part or to deny the petitioner's request shall be made by a member. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) Adjournment.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within three business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives, Research Center.

R35-1-4. Committee Minutes.

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Written minutes of the meetings and appeal hearings shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives, Research Center.

KEY: government documents, state records committee*, records appeal hearings*

1999

63-2-502(2)(a)



Commerce, Occupational and Professional Licensing
R156-28
Veterinary Practice Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21753

FILED: 12/21/1998, 16:57

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needed to correct an oversight in the rule since the practical examination was deleted in November 1997.

SUMMARY OF THE RULE OR CHANGE: Two sections of the rule with regards to the practical examination are being deleted: Section R156-28-302d, requirements to sit for the practical

examination; and Section R156-28-302e, content of the practical examination. The licensure requirement to take and pass a veterinary practical examination was deleted (see DAR No. 20014). However, at that time the Division failed to also delete these two sections that dealt with the practical examination. Remaining sections with R156-28-302 numbering were renumbered.

(DAR Note: The amendment which deleted the requirement to take and pass a veterinary practical examination was published in the October 15, 1997, issue of the *Utah State Bulletin*, under DAR No. 20014 and is effective as of November 21, 1997.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-28-1, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No costs or savings are anticipated with this filing because the sections being deleted were inadvertently left in the rule when the Utah Veterinary Practical Examination was previously deleted in November 1997. The sections, which clarified the practical examination, are no longer necessary.

❖LOCAL GOVERNMENTS: No costs or savings are anticipated with this filing because the sections being deleted were inadvertently left in the rule when the Utah Veterinary Practical Examination was previously deleted in November 1997. The sections, which clarified the practical examination, are no longer necessary.

❖OTHER PERSONS: No costs or savings are anticipated with this filing because the sections being deleted were inadvertently left in the rules when the Utah Veterinary Practical Examination was previously deleted in November 1997. The sections, which clarified the practical examination, are no longer necessary. Original savings from deleting the requirement for a practical examination were identified in the rule filing made effective November 21, 1997 (DAR No. 20014).

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs or savings are anticipated with this filing because the sections being deleted were inadvertently left in the rules when the Utah Veterinary Practical Examination was previously deleted in November 1997. The sections, which clarified the practical examination, are no longer necessary. Original savings from deleting the requirement for a practical examination were identified in the rule filing made effective November 21, 1997 (DAR No. 20014).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this amendment is to delete certain portions of the rule governing the contents of and requirements to sit for the Utah Veterinary Practical Examination which were inadvertently left in the rules when the Utah Veterinary Practical Examination was previously deleted from the rules governing this profession. Since there is no state examination, there is no need for rules delineating the content and requirements to sit for the same. Since the examination itself was previously discontinued there will be no fiscal impact on the state or

local government budgets nor any impact on those in the profession or the general public--Douglas C. Borba.

THE FULL TEXT OF THIS RULE 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 RULE TO:

Karen Reimherr at the above address, by phone at (801) 530-6767, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.kreimher@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

R156-28. Veterinary Practice Act Rules.

~~**[R156-28-302d. Qualifications for Licensure - Requirements to Sit for the Utah Veterinary Practical Examination:**~~

~~(1) Applicants must complete the educational requirements for licensure before sitting for the PE.~~

~~(2) The PE may be taken three times within a three year period. After failure of the third examination, the applicant must submit evidence of education and refresher courses that are acceptable to the division in consultation with the board prior to being allowed to sit for further examinations.~~

~~**R156-28-302e. Qualifications for Licensure - Content of Utah Veterinary Practical Examination:**~~

~~The PE shall cover two content areas related to practice in Utah as follows:~~

- ~~(1) diseases peculiar to this area; and
(2) plants poisonous to livestock in the Western United States;]~~

R156-28-302[f]d. Qualifications for Licensure - Content of Utah Veterinary Law and Rules Examination.

The Utah Veterinary Law and Rules Examination shall cover five content areas:

- (1) the Division of Occupational and Professional Licensing Act, Title 58, Chapter 1;
- (2) the General Rules of the Division of Occupational and Professional Licensing, R156-1;
- (3) the Veterinary Practice Act, Title 58, Chapter 28;
- (4) the Veterinary Practice Act Rules, R156-28; and
- (5) the State of Utah rules governing the admission and inspection of livestock, poultry, and other animals, R58-1.

R156-28-302[g]e. Qualifications for Licensure - Meet With the Board.

Applicants may be requested to meet with the board, at the discretion of the division or board, to satisfy the board that the applicant is qualified to practice veterinary medicine in the state.

KEY: veterinary medicine, licensing

~~[November 21, 1997]1999~~

Notice of Continuation May 12, 1997

58-1-106(1)

58-1-202(1)

58-28-1

**Health, Health Care Financing,
Coverage and Reimbursement Policy**

R414-304

Income and Budgeting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21764

FILED: 12/28/1998, 11:59

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth income standards for Medicaid eligibility. The income standards show the maximum income an individual or family can have and still qualify for Medicaid. For some Medicaid coverage groups with income exceeding the standards, they can pay the difference between their countable income and the standards, either with cash or by incurring medical bills, to qualify for Medicaid.

SUMMARY OF THE RULE OR CHANGE: There will be an increase in the Basic Maintenance Standard (BMS) of approximately 2.9%.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5, and Title 26, Chapter 18

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.725 through 435.845, 1997 ed.; 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1151, and 416.1163 through 416.1166, 1997 ed.; 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xii), 233.20 (4)(ii), 233.20(a)(6)(v)(B), and 233.51, 1997 ed.; 20 CFR 416.1110 through 416.1112, 1997 ed.; 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(ix), and 233.20(a)(11), 1997 ed.; 42 CFR 435.601 and 435.602; and 45 CFR 206.10, 1997 ed.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Some spend-down collections will be lost because of the increased limit. An estimate is that approximately \$10,000 a month would not be collected. Part of this is offset because medical bills used for spend-down

are used at full cost, but if Medicaid were to pay these bills, the payment would be at Medicaid rate. In addition, some people might become eligible for Medicaid because the spend-down is lower. This should not be a large number of people because the increase is only an average of \$22 a month.

❖LOCAL GOVERNMENTS: This rule has no application to local government, so there should not be a fiscal impact.

❖OTHER PERSONS: Medicaid recipients will retain more of their income and still qualify for Medicaid. With the lower spend-down for eligible Medicaid clients, there should be an average saving of \$18 monthly per client. There is an average of 900 clients involved, for an estimated \$16,200 aggregate monthly savings for the clients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no involvement for affected persons other than that described under "Other persons."

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will appropriately increase the basic maintenance standard and slightly increase the number of persons eligible for Medicaid as well as reduce slightly the cost to those already eligible through the medically needy spend-down option in Medicaid. Health care providers may have costs reduced if the fewer persons seeking services are uninsured--Rod Betit.

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 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gayle Six at the above address, by phone at (801) 538-6895, by FAX at (801) 538-6952, or by Internet E-mail at gsix@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Rod L. Betit, Executive Director

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

R414-304. Income and Budgeting.

R414-304-[40]1. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1[-]) The [d]Department adopts 42 CFR 435.725 through 435.845, 199[4]7 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1151, and 416.1163 through 416.1166, 199[4]7 ed., which are incorporated by reference. The

[d]Department adopts Pub. L. No. 105-33(4735) which is incorporated by reference.

(2[-]) The [following] definitions in R414-1 and R414-301 apply to this rule. In addition:

(a[-]) An "in-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(b[-]) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI payment plus \$20.

(c[-]) "Benefit month" means a month in which an individual is eligible for Medicaid.

(3[-]) Current [d]Department practices:

(a[-]) Only the portion of a VA check to which the client is legally entitled is countable income. For A, B, and D Medicaid, QMB, SLMB, and QI, VA payments which are based on need, and aid and attendance payments do not count as income. The portion of a VA payment which is made because of unusual medical expenses is countable income. For institutional and waiver recipients VA payments for aid and attendance and unusual medical expenses do not count as income; other income based on need is countable income.

(b[-]) The value of special circumstance items is not countable income if the items are paid for by donors.

(c[-]) Death benefits are not countable income if the money is spent on the deceased person's burial or last illness.

(d[-]) For A, B and D Medicaid two-thirds of child support received [per]a month is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash, in property, in payment of obligations or in-kind.

(e[-]) For A, B and D Institutional Medicaid all child support received shall be counted as unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash, in property, in payment of obligations or in-kind.

(f[-]) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(g[-]) If the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the value or the presumed maximum value, whichever is less, of food or shelter received. If the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the prorated share of household operating expenses, or the presumed maximum value, whichever is less.

(h[-]) SSA reimbursements of Medicare premiums are not countable income.

(i[-]) Reim[er]bursements of a portion of Medicare premiums made by the state Medicaid agency to an individual eligible for QI-Group 2 coverage are not countable income.

(j[-]) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(k[-]) Expenses relating to the fulfillment of a plan to achieve self-support are not allowed as deductions from earned income.

(l[-]) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

- (i[-]) tuition;
- (ii[-]) fees;
- (iii[-]) books;
- (iv[-]) equipment;
- (v[-]) special clothing needed for classes;
- (vi[-]) travel to and from school at a rate of ~~[\$0.21]~~ 21 cents a mile, unless the grant identifies a larger amount;
- (vii[-]) child care necessary for school attendance.

(4[-]) The following provisions apply only to A, B and D Medicaid:

(a[-]) The income of a spouse is not considered in determining Medicaid eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b[-]) If both spouses are eligible for A, B, or D Medicaid or QMB, SLMB, or QI assistance, the income of both spouses is combined to determine eligibility. After allowable deductions, the income is compared to the income level (BMS) for a household of two.

(c[-]) If any parent in the home receives SSI, the income of neither parent is considered to determine a child's eligibility for B or D Medicaid.

(d[-]) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

R414-304-~~40~~2. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1[-]) The ~~(d)~~Department adopts 42 CFR 435.725 through 435.845, 199~~[#]~~ ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xii), 233.20 (4)(ii), 233.20(a)(6)(v)(B), and 233.51, 199~~[#]~~ ed., which are incorporated by reference. The ~~(d)~~Department adopts Pub. L. No. 105-33 (4735) which is incorporated by reference.

(2[-]) The following definitions apply to this section:

(a[-]) A "a bona fide loan" is a loan ~~[which]~~that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b[-]) "Unearned income" means cash received for which the individual performs no service.

(c[-]) "Quarter" means any three month period that includes January through March, April through June, July through September or October through December.

(3[-]) Current ~~(d)~~Department practices:

(a[-]) Bona fide loans are not countable income.

(b[-]) Support and maintenance assistance is not countable income.

(c[-]) The value of food stamp assistance is not countable income.

(d[-]) SSI and State Supplemental Payments are income for children receiving Child Medicaid.

(e[-]) \$30 is deducted from rental income if that income is consistent with community standards. Additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of \$30 may be allowed:

(i[-]) taxes and attorney fees needed to make the income available;

(ii[-]) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(iii[-]) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(iv[-]) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(f[-]) Cash gifts for special occasions that do not exceed \$30 ~~[per]~~ a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(g[-]) Deferred income is countable income when it is received by the client if receipt can be reasonably anticipated.

(h[-]) The value of special circumstance items is not countable income if the items are paid for by donors.

(i[-]) Home energy assistance is not countable income.

(j[-]) All money received from an insurance settlement for destroyed exempt property is counted unless the income is used to purchase replacement property. If income received exceeds the money needed to replace the property, the difference is countable income.

(k[-]) SSA reimbursements of Medicare premiums are not countable income.

(l[-]) Payments from trust funds are countable income if the payments are not available on demand.

(m[-]) AFDC, General Assistance, and Refugee Cash Assistance is not countable income.

(n[-]) Only the portion of a Veteran's Administration check to which the client is legally entitled to is countable income.

(o[-]) When the entitlement amount of a check differs from the payment amount, the entitlement amount is countable income unless the deduction is involuntary.

(p[-]) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts ~~[will]~~shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(q[-]) The income of an alien's sponsor is not countable income.

(r[-]) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and the client pays the expense. Allowable deductions include:

(i[-]) tuition;

(ii[-]) fees;

(iii[-]) books;

(iv[-]) equipment;

(v[-]) special clothing needed for classes;

(vi[-]) travel to and from school, at a rate of ~~[\$0.21]~~ 21 cents a mile, unless the grant identifies a larger amount;

(vii[-]) child care necessary for school attendance.

(s[-]) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

R414-304-[40]3. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1[-]) The [d]Department adopts 42 CFR 435.725 through 435.845, 199[4]7 ed., and 20 CFR 416.1110 through 416.1112, 199[+]7 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, 1991 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2[-]) Current [d]Department practices:

(a[-]) The [d]Department shall allow SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside income that allows them to purchase work-related equipment or meet self support goals. This income is excluded.

(b[-]) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(c[-]) For A, B and D Institutional Medicaid, \$125 shall be deducted from earned income before contribution towards cost of care is determined.

(d[-]) For A, B and D Institutional Medicaid impairment-related work expenses are allowed as an earned income deduction.

(e[-]) Capital gains are included in the gross income from self-employment. The cost of doing business is deducted from the gross income to determine the countable net income from self-employment. However, no deductions are allowed for the following business expenses:

- (i[-]) transportation to and from work;
- (ii[-]) payments on the principal for business resources;
- (iii[-]) net losses from previous periods;
- (iv[-]) taxes;
- (v[-]) money set aside for retirement;
- (vi[-]) work-related personal expenses;
- (vii[-]) depreciation.

R414-304-[40]4. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1[-]) The [d]Department adopts 42 CFR 435.725 through 435.845, 199[4]7 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(ix), and 233.20(a)(11), 199[2]7 ed., which are incorporated by reference.

(2[-]) The following definitions apply to this section:

(a[-]) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b[-]) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours [per]a day, whichever is less.

(c[-]) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d[-]) "Full-time employment" means an average of 100 or more hours of work [per]a month or an average of 23 hours [per]a week.

(e[-]) "Ratable reduction" means a 25% deduction of net income allowed in the AFDC program.

(3[-]) Current [d]Department practices:

(a[-]) The income of a dependent child is not countable income if the child is:

- (i[-]) in school or training full-time;
- (ii[-]) in school or training part-time, if employed less than 100 hours a month;
- (iii[-]) in JTPA.

(b[-]) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received an AFDC financial payment in one of the four previous months AND this disregard has not been exhausted. The AFDC rateable reduction is not allowed for Medicaid.

(c[-]) For Family Institutional Medicaid the AFDC rateable reduction shall not be allowed as a deduction.

(d[-]) For Family Medicaid child care costs are deducted from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$200.00 per child under age 2 and \$175.00 per child age 2 and older may be deducted. A maximum of up to \$160.00 per child under age 2 and \$140.00 per child age 2 and older a month may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(e[-]) For Family Institutional Medicaid child care costs are deducted from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$160 a month per child may be deducted. A maximum of up to \$130 a month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

R414-304-[40]5. A, B and D Medicaid and Family Medicaid Income Deductions.

(1[-]) The [d]Department adopts 42 CFR 435.831, 199[4]7 ed., which is incorporated by reference.

(2[-]) Current [d]Department practices:

(a[-]) Health insurance premiums providing coverage for anyone in the family or the BMS are allowed as deductions in the month of payment. The entire payment is allowed as a deduction and is not prorated. Health insurance premiums are not allowed as a deduction for determining eligibility for the aged and disabled poverty level Medicaid group, QMB, SLMB, or QI coverage.

(b[-]) Medicare premiums are not allowed as deductions if the state [with]reimburses the client.

(c[-]) Medical expenses are allowed as deductions only if the expenses meet all of the following conditions:

(i[-]) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(ii[-]) The medical bill [with]shall not be paid by Medicaid or a third party.

(iii[-]) The medical bill remains unpaid or was paid during the month of application or at anytime in the 3 months immediately preceding the month of application. The date the medical service was provided on an unpaid expense does not matter.

(d[-]) A medical expense is not allowed as a deduction more than once.

(e[-]) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health is responsible for deciding if services are not medically necessary.

(f[-]) QMB, SLMB, and QI clients are ineligible for assistance if countable income exceeds the income limit.

(g[-]) Prenatal and Newborn Medicaid clients are ineligible for assistance if countable income exceeds the income limit.

(h[-]) As a condition of eligibility, clients must certify on Form 1049B that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts, at each review, and when the client chooses a different spenddown option. If medical expenses are less than or equal to the spenddown, the client is not eligible for that month.

(i[-]) Pre-paid medical expenses are not allowed as deductions.

(j[-]) The [d]Department elects not to set limits on the amount of medical expenses that can be deducted.

(k[-]) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the local office.

(l[-]) Medical costs are not allowable deductions for determining QMB, SLMB, or QI eligibility.

(m[-]) Medical costs are not allowed as deductions for determining eligibility for the poverty level group of A and D Medicaid. No spenddown is allowed to meet the income limit for the poverty level group of A and D Medicaid.

(n[-]) For A, B and D Medicaid institutional costs are allowed as deductions if the services are medically necessary. The Department of Health is responsible for deciding if services for institutional care are not medically necessary.

(o[-]) No one is required to pay a spenddown of less than \$1.

(p[-]) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown [when]if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-[40]6. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1[-]) The [d]Department adopts 42 CFR 435.725, 199[4]7 ed., which is incorporated by reference. The [d]Department adopts Subsection 1902(r)(1)(i) of the Compilation of the Social Security Laws, 1991 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2[-]) The following definitions apply to this section:

(a[-]) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b[-]) "Dependent" means earning less than \$2,000 a year, not being claimed as a dependent by any other individual, and receiving

more than half of ones annual support from the client or the client's spouse.

(3[-]) Current [d]Department practices:

(a[-]) Health insurance premiums providing coverage for anyone in the family are allowed as a deduction in the month due. The payment shall not be pro-rated.

(i[-]) For institutionalized clients, the [d]Department shall allow health insurance premiums only for the institutionalized client and only if paid with the institutionalized client's funds.

(ii[-]) The [d]Department [with]shall allow the portion of a combined premium, attributable to the institutionalized client, as a deduction if the combined premium includes a spouse and is paid from the funds of the institutionalized client.

(b[-]) Medicare premiums are not allowed as deductions if the state [with]reimburses the client.

(c[-]) Medical expenses are allowed as deductions only if the expenses meet all of the following conditions:

(i[-]) the medical service was received by the client;

(ii[-]) the unpaid medical bill [with]shall not be paid by Medicaid or a third party;

(iii[-]) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(d[-]) A medical expense is not allowed as a deduction more than once.

(e[-]) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health is responsible for deciding if services are not medically necessary.

(f[-]) Pre-paid medical expenses are not allowed as deductions.

(g[-]) The [d]Department elects not to set limits on the amount of medical expenses that can be deducted.

(h[-]) Institutionalized clients are to contribute all countable income remaining after allowable deductions to the institution as their contribution to the cost of their care.

(i[-]) The personal needs allowance is \$45.

(j[-]) An Individual receiving assistance under the terms of a Home and Community-Based Services Waiver is eligible to receive a deduction for a non-institutionalized spouse and dependent minor child as if that individual were institutionalized.

(k[-]) A deduction for a spouse or dependent family member is allowed only if the institutionalized or waiver client contributes money to the spouse or dependent family member.

(l[-]) The minimum monthly maintenance needs allowance is the difference between the total gross income of the spouse at home and an amount equal to 150% of the federal poverty limit for a household of two. An amount is also allowed for the excess shelter costs of the spouse at home. The excess shelter cost is the amount of the actual shelter expenses, plus a utility allowance, minus 30% of the above mentioned federal poverty limit. The total deduction for a spouse cannot exceed the established amount unless the client has a court order requiring a greater deduction.

(m[-]) Income received by the spouse or dependent family member is counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. Needs-based income and state supplemental payments are not counted in calculating the deduction. Tribal income is counted.

{n[-]} If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

{o[-]} The family allowance for each family member of an institutionalized client is not to exceed one third of the amount by which the minimum monthly maintenance allowance exceeds the monthly income of that family member.

{p[-]} A client is not given Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

{q[-]} The standard utility allowance for households with heating costs is \$150. For households without heating costs, actual utility costs are used. The maximum allowance for a telephone bill is \$20. Clients are not required to verify utility costs more than once in a certification period.

{r[-]} Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown ~~when~~ if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-[40]7. Budgeting.

{1[-]} The [d]Department adopts 42 CFR 435.601 199[+]~~7~~ ed., which is incorporated by reference. The [d]Department adopts 45 CFR 233.31 and 233.33, 199[+]~~7~~ ed., which are incorporated by reference.

{2[-]} The following definitions apply:

{a[-]} "Best estimate" means that income is calculated on a best guess of household income, deductions and size during the upcoming certification period.

{b[-]} "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

{c[-]} "Prospective budgeting" is the calculation of income and determining benefit level based on the best estimate of income.

{d[-]} "Income averaging" means using a history of past income and averaging it over a determined period of time that is representative of future income.

{e[-]} "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

{f[-]} "Income annualizing" means taking past income over a long period of time and calculating a monthly amount based on it. Self employed households or seasonal workers may have their income annualized.

{g[-]} "Factoring" means that a monthly amount ~~with~~ shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income ~~with~~ shall be factored by multiplying the weekly amount by 4.3 to obtain a

monthly amount. Income paid every other week ~~with~~ shall be factored by 2.15 to obtain a monthly amount.

{h[-]} "Reportable income changes" are those that cause income to change by more than \$25.

{3[-]} Current [d]Department practices:

{a[-]} Prospective budgeting shall be done on a monthly basis.

{b[-]} A best estimate of income based on the best available information is an accurate reflection of client income in that month.

{c[-]} The best estimate of income to be received or made available to the client in a month shall be used to determine eligibility and spenddown.

{d[-]} Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

{e[-]} Income:

{i[-]} For QMB, SLMB, QI, and A, B, D, and Institutional Medicaid income ~~with~~ shall be counted as it is received. Income that is received weekly or every other week ~~with~~ shall not be factored.

{ii[-]} For Family Medicaid programs, income that is received weekly or every other week ~~with~~ shall be factored.

{f[-]} Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource. Lump sum payments can be earned or unearned income.

{g[-]} Income paid out under a contract is prorated to determine the countable income for each month. Only the prorated amount is used to determine spenddown or eligibility for a month. If the income is received in fewer months than the contract covers, the income is prorated over the period of the contract. If received in more months than the contract covers, the income is prorated over the period of time in which the money is received.

{h[-]} Farm and self-employment income is prorated to determine the monthly countable income. If farm income or self-employment income is received less often than monthly, the income is prorated over the number of months in which it was earned.

{i[-]} Student income received other than monthly is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months classes are in session.

{j[-]} Income from Indian trust accounts not exempt by federal law is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of months it covers.

{k[-]} Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought.

R414-304-[40]8. Income Standards.

{1[-]} The [d]Department adopts Section 1905 of the Compilation of the Social Security Laws, 1993 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

{2[-]} Current [d]Department practices:

{a[-]} To qualify for the QMB program, income must be equal to or less than 100% of the federal non-farm poverty level.

{b[-]} To qualify for the SLMB program, income must exceed the QMB limit and be less than 120% of the Federal non-farm poverty level.

(c[-]) To qualify for the QI-Group 1 program, income must exceed the SLMB limit and be less than 135% of the Federal non-farm poverty level.

(d[-]) To qualify for the QI-Group 2 program, income must exceed the QI-Group 1 limit and be less than 175% of the Federal non-farm poverty level.

(e[-]) The Aged and Disabled poverty level group income standard is 100% of the federal non-farm poverty level. If an Aged or Disabled person's income exceeds this amount the current Medicaid Income Standards (BMS) apply.

(f[-]) The current Medicaid income standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	[372] 382
2	[456] 468
3	[560] 583
4	[664] 683
5	[756] 776
6	[833] 856
7	[872] 895
8	[913] 938
9	[956] 982
10	[996] 1,023
11	[1,037] 1,065
12	[1,078] 1,108
13	[1,120] 1,150
14	[1,160] 1,191
15	[1,202] 1,235
16	[1,244] 1,278
17	[1,284] 1,319
18	[1,328] 1,364

R414-304-[40]9. A, B and D Medicaid, QMB, SLMB, and QI Filing Unit.

(1[-]) The [d]Department adopts 42 CFR 435.601 and 435.602, 199[+] ed., which are incorporated by reference. The [d]Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, 1993 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2[-]) The basic maintenance standard (BMS) is the income limit used to determine eligibility. The BMS for A, B and D Medicaid includes all of the following individuals:

(a[-]) the client;

(b[-]) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid.

(3[-]) The BMS for a QMB, SLMB, or QI case includes all of the following individuals:

(a[-]) the client;

(b[-]) a spouse living in the same home who receives Part A Medicare.

(4[-]) Eligibility and spenddown A, B and D Medicaid are based on the income of the following individuals:

(a[-]) the client;

(b[-]) parents living with the minor client;

(c[-]) a spouse

(5[-]) No spenddown is allowed for QMB, SLMB, or QI programs.

R414-304-[4]10. Family Medicaid Filing Unit.

(1[-]) The [d]Department adopts 45 CFR 206.10, 199[+] ed., which is incorporated by reference.

(2[-]) Current [d]Department practices:

(a[-]) Any unemancipated minor child may be excluded from the Medicaid coverage group at the request of the specified relative responsible for the children. An excluded child is considered an ineligible child. Income and resources of an excluded child are not considered when determining eligibility or spenddown.

(b[-]) A grandparent's income is not used to determine eligibility or spenddown for a minor child. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(c[-]) If anyone in the BMS is pregnant, the unborn child is included in the BMS. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children are included in the BMS.

(d[-]) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents are included in the BMS.

(e[-]) Parents who have relinquish their parental rights are not included in the BMS.

(f[-]) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents are not included in the BMS.

R414-304-[4]11. A, B and D Institutional Medicaid and Family Institutional Medicaid Filing Unit.

(1[-]) For A, B, and D Medicaid, income of the client's parents and spouse shall not be used to determine eligibility and spenddown.

(2[-]) For Family Medicaid programs, the [d]Department adopts 45 CFR 206.10, 199[+] ed., which is incorporated by reference.

(3[-]) Eligibility and spenddown shall be based on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 199[+] ed., which is incorporated by reference.

KEY: financial disclosure, income, budgeting

[April 1, 1998]1999

26-18-1[-et seq.]

Notice of Continuation February 6, 1998



Health, Health Data Analysis

R428-10

Health Data Authority Hospital Inpatient Reporting Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21755

FILED: 12/22/1998, 16:31

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule allows health providers to submit encounter data through the Utah Health Information Network (UHIN) or another electronic data interchange network. For teaching hospitals, resident ID and type fields will be added to the data submitted to the Health Data Committee to track resident provided care. Also, patient social security number and external code will be added as required level 1 data elements.

SUMMARY OF THE RULE OR CHANGE: Rule R428-10 defines the reporting requirements for the submittal of hospital inpatient data by hospitals. The Graduate Medical Education Council (GMEC) requested that the Utah Health Data Committee add the resident identification and type fields to the committee's hospital data reporting requirements. These fields will identify the relevant hospital discharge records so that the GMEC can track the utilization and quality profiles of resident-provided care. This rule affects only teaching hospitals. These hospitals already collect this field in their data systems and the cost of adding to the current Health Data Committee submissions are lower than an independent submission to the GMEC. Patient social security number and external code (E-code) data elements were added as required data elements sometime in 1994 through the proper rulemaking process with a public hearing, but clerical errors in the approved rule text resulted in the amendment not being reflected in the Utah Administrative Code. This rule amendment corrects this error. Finally, this amendment allows hospitals to submit data through the Utah Health Information Network or another compatible electronic data interchange network to the Health Data Committee. Hospitals can continue to submit data by computer diskette or magnetic tape if they choose not to use an electronic data interchange network.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Hardware, software, programming, and data testing reports will be incurred by the Department. Additional storage related to the receipt and processing of the large volume of raw claims is expected.

❖LOCAL GOVERNMENTS: The rule does not affect local governments and has no fiscal impact on them.

❖OTHER PERSONS: The maximum total cost would be \$7,000 for the 7 teaching hospitals in the State of Utah for the first year only. No additional cost is expected for successive years. There is no cost to teaching hospitals for submitting their data with the resident identification and type fields to the Utah Health Information Network (UHIN).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Hospitals in Utah already use electronic data interchange technology for total or partial submission of claims. The UHIN has indicated that there will be no charge to the Health Data Authority for receiving data through the UHIN network. There is no cost to each teaching or non-teaching hospital for submitting data to UHIN. Initial costs to the state would be significant and would include the purchase of new hardware and software to accommodate the large volume of data, the revision of

technical specifications and rules, and the establishment of adequate processes to edit, test, and verify data quality. These costs are expected to be offset by reduced data collection costs in the future, once the system is fully developed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Standardizing the mechanism for reporting data through electronic data interchange technology will benefit all persons involved in this process. The costs to affected providers will be minimal compared to the long-term benefits--Rod Betit.

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

Health
Health Data Analysis
Cannon Health Building
288 North 1460 West
PO Box 144004
Salt Lake City, UT 84114-4004, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Luis Paita at the above address, by phone at (801) 538-6386, by FAX at (801) 538-9916, or by Internet E-mail at lpaita@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Rod L. Betit, Executive Director

**R428. Health, Health Data Analysis.
R428-10. Health Data Authority Hospital Inpatient Reporting Rule.**

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R428-10-3. Definitions.

These definitions apply to rule R428-10.

- (1) ["Bureau"]"Office" as defined [(im)]in R428-2-3(A).
- (2) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.
- (3) "Hospital" means a facility that is licensed underR432-100.
- (4) "Level 1 data element" means a required reportable data element.
- (5) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.
- (6) "Patient Social Security number" is the social security number of the patient receiving inpatient care.

(7) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The ~~Bureau~~Office assigns the number to serve as a control number for data analysis.

(8) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

R428-10-4. Source of Inpatient Hospital Discharge Data Reporting.

The reporting source for hospital inpatient discharge data is Utah licensed hospitals.

(1) A hospital facility, either general acute care or specialty hospital, shall report discharge data records for each inpatient discharged from its facility.

(2) A hospital may designate an intermediary, such as the Utah Hospital Association, or may submit discharge data directly to the committee.

(3) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.

(4) Each hospital shall designate a department within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the ~~Bureau~~Office.

R428-10-5. Data Submittal Schedule.

Each hospital shall submit to the ~~Bureau~~Office a single discharge data record for each patient discharged according to the schedule shown in Table 1, Hospital Discharge Data Submittal Schedule. For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

TABLE 1
HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

~~[YEAR THREE AND BEYOND DISCHARGE DATA SUBMITTAL SCHEDULE
JANUARY 1, 1994 - DECEMBER 31, 1994~~

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

R428-10-6. Data Element Reporting.

Tables 2 and 3 display the reportable data elements by defined level. A hospital shall, as a minimum, report the required level 1 data elements shown in Table 2. Each hospital shall report level 2 data elements shown in Table 3 whenever the information is a part of the hospital's patient record. Beginning July 1, 1993, each patient social security number shall be reported as a level 2 (as available) data element. Beginning January 1, 1995, each hospital shall collect patient social security number as a level 1 (required) data element on the hospital discharge record, and report the patient social security number with the complete discharge record according to the submittal schedule. The Department shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control

number. The Department may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

Each hospital shall submit the reported data elements on computer diskette, ~~or~~magnetic tape, ~~to the Bureau~~or as an "electronic copy" of encounter or claim data, through the Utah Health Information Network or another compatible electronic data interchange network. The Office shall accept data that complies with data standards established in R590-164, Uniform Health Billing Rule. The ~~Bureau~~Office shall provide to each hospital, a Hospital Inpatient Discharge Data Submittal Technical Manual which outlines the specifications, format, and types of data to report. The revised Submittal Technical Manual is effective on January 1, 1995.

TABLE 2
REQUIRED LEVEL 1
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier
Patient	
2.	Patient control number
3.	Patient's medical chart number
4.	<u>Patient Social Security Number</u>
[4-] 5.	Patient's postal zip code for address
[5-] 6.	Patient's date of birth
[6-] 7.	Patient's gender
Service	
[7-] 8.	Admission date
[8-] 9.	Type of admission
[9-] 10.	Source of admission
[10-] 11.	Patient's status
[11-] 12.	Statement covers period
Charge	
[12-] 13.	Revenue codes
[13-] 14.	Units of service
[14-] 15.	Total charges by revenue code
Payer	
[15-] 16.	Payer's identification
[16-] 17.	Patient's relationship to insured
Diagnosis and Treatment	
[17-] 18.	Principal diagnosis
[18-] 19.	Other diagnosis codes
20.	<u>External cause of injury code (E-code)</u>
[19-] 21.	Principal procedure code
[20-] 22.	Other procedure codes
[21-] 23.	Procedure coding method, required if coding is not ICD-9
Physician	
[22-] 24.	Attending physician ID
[23-] 25.	Other physicians' IDs
Other	
[24-] 26.	Type of bill

TABLE 3
WHEN DATA ELEMENT IS AVAILABLE FROM THE
HOSPITAL'S PATIENT RECORD
LEVEL 2
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status

Payer	
2.	Insured group name
Employer	
3.	Employment status code
4.	Employer name
5.	Employer location
Charge	
6.	Prior payments
7.	Patient Race and Ethnicity
8.	Estimated amount due
Payer	
9.	Certificate/Social Security Number/Health Insurance Claim/Identification Number
<hr/>	
Physician	
10.	Resident ID
11.	Resident ID Type

R428-10-7. Exemptions, Extensions, and Waivers.

(1) Hospitals may submit requests for exemptions or waivers to the committee within 60 calendar days of the due date as listed in the hospital discharge data submittal schedule in R428-10-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the [Bureau]Office at least ten working days prior to the due date as listed in the hospital discharge data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital must separately request each additional 30 calendar day extension.

(3) The committee may grant exemptions or waivers when the hospital demonstrates that compliance imposes an unreasonable cost to the hospital. The [Bureau]Office may grant extensions when the hospital documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

- (a) the petitioner's name, mailing address, telephone number, and contact person;
 - (b) the date the exemption, extension, or waiver is to start and end;
 - (c) a description of the relief sought, including reference to the specific sections of the rule;
 - (d) a statement of facts, reasons, or legal authority in support of the request; and
 - (e) a proposed alternative to the requirement.
- (4) A form for exemption, extension, or waiver can be found in the technical manual available from the [Bureau]Office. Exemptions, extensions, or waivers may be granted for the following:

- (a) Hospital exemption: All hospitals are subject to the reporting requirements. Reasons justifying an exemption might be a circumstance where the hospital makes no effort to charge any patient for service.
- (b) Discharge consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.

(c) Reportable data element exemption: Each request for a data element exemption must be made separately.

(d) Submission media exemption: This exemption allows variation in the submission media, such as a paper copy of the uniform billing form.

(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.

(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the [Bureau's]Office's ability to process the submittal media and format with available computer resources.

R428-10-8. Penalties.

Any person who violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: health, hospital policy*, health planning
[1994]February 17, 1999 26-33a-104
Notice of Continuation December 23, 1997 26-33a-108



Health, Health Systems Improvement,
 Child Care Licensing
R430-100-13
 Infection Control

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 21769
 FILED: 12/31/1998, 13:19
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A mistake in the markup of the previous amendment to R430-100 resulted in the codification of a partial sentence. This amendment completes the sentence.

SUMMARY OF THE RULE OR CHANGE: This rule simply adds "Diapering procedures shall be posted" to complete the sentence in Subsection R430-100-13(3). (**DAR Note:** The previous amendment was published in the August 1, 1998, *Utah State Bulletin* under DAR No. 21277.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: Changes to this rule do not require an increased cost or savings to the Bureau.
 - ❖LOCAL GOVERNMENTS: Changes to this rule do not require an increased cost or savings to local agencies.
 - ❖OTHER PERSONS: It is anticipated that the 270 child care centers already have complied with the requirement to post diapering procedures. There is no related cost to providers.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be an increase in cost for compliance, since the requirements of this rule were already adopted in 1998.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This correction of an inadvertent omission will not have an adverse impact on business.

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

Health
 Health Systems Improvement,
 Child Care Licensing
 288 North 1460 West
 PO Box 142003
 Salt Lake City, UT 84114-2003, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE 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@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Rod Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-100. Child Care Center.

R430-100-13. Infection Control.

(1) All care givers shall comply with universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen Standard. The director shall keep and maintain a portable blood and bodily fluid clean-up kit. All care givers shall know the location and how to use the kit.

(2) All care givers shall wear new disposable latex gloves or an approved equivalent listed in OSHA part 1910.1030 for first aid procedures involving blood or clean-up of bodily fluids.

(3) Diapering procedures shall be posted by each diapering station which shall include the following:

(a) If a disposable paper covering is used, it shall be placed between the child and the diapering surface, and shall be disposed of following each diaper change.

(b) Soiled diapers shall be placed in a container that is lined and has a tightly fitting lid. Containers shall be cleaned and disinfected daily.

(c) The diapering surface shall be non-absorbent, cleaned and sanitized after each diaper change.

(d) Sanitizers shall be measured to ensure proper strength, or be commercially prepared, shall be labeled and stored in the diaper changing area, and inaccessible to children.

(4) If cloth diapers are used for children, the following procedure shall be followed:

(a) Cloth diapers shall not be rinsed at the center;

(b) After a diaper change, the cloth diaper shall be placed directly into a container labeled with the child's name or diapering service.

(5) Care givers shall change a child's clothing which is soiled with fecal material or urine promptly and place the clothing in a leak proof container to be sent home with the parent or legal guardian. Clothing soiled with feces or urine shall not be rinsed at the center.

(6) In child care centers, care givers whose primary responsibility is the care of diapered children shall not prepare food for children or staff outside of the classroom areas used by infants and toddlers.

(7) In child care centers, care givers who prepare food in the kitchen shall not change diapers or assist in toilet training.

(8) Personal hygiene items such as combs and toothbrushes may not be shared between children and shall be labeled (with the child's name) and stored separately.

(9) Indoor activity equipment and toys shall be cleaned and sanitized weekly or more often as necessary.

(a) Stuffed animals shall be machine washable.

(b) If water play tables are used, the care giver shall wash and sanitize the table daily and children shall wash their hands prior to engaging in the activity.

(c) If child care centers provide care for 0- 24 month old children, all toys used by the infants during the day shall be washed daily.

(10) Center hand washing policies shall be followed to assure protection from contamination and the spread of microorganisms. In child care centers, hand washing procedures shall be posted at all hand washing sinks.

(a) Care givers shall wash and scrub their hands for 20 seconds with soap and warm running water at times specified in policy.

(b) Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible.

(c) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(d) Only protected single use towels or electric hand-drying devices may be used to dry hands.

(e) The care giver shall provide for a means for hand washing on field trips.

KEY: child care facilities
~~[September 10, 1998]~~1999

26-39



Health, Health Systems Improvement,
Health Facility Licensure
R432-150
Nursing Care Facility Rules

NOTICE OF PROPOSED RULE

(Repeal and reenact)
DAR FILE NO.: 21752
FILED: 12/21/1998, 16:37
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A subcommittee was established by the Health Facility committee to review all sections of the rule as part of the five-year review process. The subcommittee suggested numerous changes to improve the rule.

SUMMARY OF THE RULE OR CHANGE: This rule proposes several significant substantive changes to rules on nursing facilities. Additional licensed nurses may be required at some facilities, more secure storage of potentially dangerous recreational items, removal of the requirement for a certified dietary manager, and additional requirements regarding provisions of dental care in intermediate care facilities are examples of the type of substantive changes. Most other changes are rewrites and elimination of redundancies. A subcommittee of the Health Facility Licensure Committee met and decided the best approach was to consolidate and stream line this rule by eliminating redundancies, combining related rules, and eliminating conflicting language. The Intermediate (R432-149) and Skilled Nursing Care Facilities (R432-150) have been combined into one Nursing Care rule (R432-150). The rule sections have been reorganized, renamed, and modified to meet the needs of the residents. Rule items have been added to the rule as agreed upon by the nursing care facility subcommittee. Sections of the rule have been renumbered and placed accordingly. Many of the individual rule reference have either been changed or deleted. The term "must" replaced the word "shall" for enforcement purposes wherever applicable. Similar sections and rules have been consolidated to avoid repetition. The sections are herein described in the new sequence as they appear in R432-150. The "Purpose" section definition was revised and reworded by the subcommittee. The "Construction Standard" section adds "maintained" to the rule section. The "Definitions" section had new definitions added for "skilled nursing care," "intermediate care," "chemical restraint," "physical restraint," "significant change," "therapeutic leave," "licensed practitioner," "governing body," "nursing staff," "licensed practical nurse," "registered nurse," "palatable," "professional," and "technical." The subcommittee added intermediate and respite scope of services to the "Scope of Services" section. A section that will add rules for Subacute level of care is designated in reserve to be later completed by an assigned subcommittee. The "Governing Body" section had the specification added that the nursing care facility must now have a governing body. The "Administrator" section had

responsibility added for policies and procedures for the administrator to follow. Personnel issues were relocated to the "Staff and Personnel" section. The "Medical Director" section no longer contains the requirement for the director to serve on various committees. Additions to the "Staff and Personnel" section included cardiopulmonary resuscitation (CPR) and first aid requirements. Abuse reporting requirements and a volunteer rule portion were also incorporated. The "Quality Assurance" section was deleted and new wording was included. In the "Resident Rights" section, an advanced directive requirement, a Long Term Care Ombudsman contract, and wording on resident funds were added. The "Resident Assessment" section added the issue of psychiatric diagnosis. The Restraint Policy was largely rewritten. Definitions of chemical and physical restraints were incorporated into the rule. "Quality of Care" now includes the addition of the former "Quality of Life" section. A medication error policy is now included in this section. The "Physician Services" section added that the facility shall provide medical supervision for residents. The "Social Services" section requires that social services be provided in accordance with the Mental Health Practice Act. The "Laboratory" section was largely deleted and the Clinical Laboratory Improvement Amendments of 1998 requirements were added. The "Pharmacy" section adds the requirement that poisonous materials must be securely stored separate from medication items. This section also specifies that the disposal of controlled substances must be in accordance with the Pharmacy Practice Act. In the "Recreation Therapy" section the former heading of "Activities" was removed. The subcommittee added the posting of the activity calendar and the securing of toxic materials from residents in the "Recreation Therapy" section. In the "Pet Policy" section the word "reasonable" was deleted to add substance to the rule. The "Admission, Transfer, and Discharge" section employs the usage of the word "must" rather than "shall." Most of the section has been reworded and revised. The facility is directed to now provide dental services and specialized rehabilitative services in the "Ancillary Health Services" section. In the "Food Services" section, the subcommittee added that the facility menu be signed and approved by a Certified Dietician and that dietary staff shall comply with the Utah Department of Health Food Service Sanitation Regulations. The section on "Medical Records" addresses a facility respite policy and a medical records system. Information pertaining to incidents, accidents and injuries is incorporated into the rule. The "Housekeeping Services" section was previously identified under the heading of "Environment." This section adds that chemicals and poisonous materials must be stored in a locked area away from residents. Policies and procedures are now required for those staff who work in concurrent duties within the facility. The redundant portions of the "Laundry Services" section have been deleted. Detailed sanitation issues regarding laundry are incorporated in the rule. The "Maintenance Services" section had new rules added stating that walkways must be maintained (e.g. snow and ice removal), that the facility must have two first aid kits and that emergency power systems must be tested. The "Policy and Procedure" section and lighting standard table were deleted. The Emergency Response and Preparedness Plan (formerly Emergency and

Disaster Plan) now includes that fire drills and documentation must be in accordance with the State of Utah Fire Prevention Board, R710-4. Added "Penalties" section as required by state law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-21-9.5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is an increased cost to Department of Health to revise, print, and distribute the new rules to providers, however this is offset by the savings to the department by eliminating R432-149.

❖LOCAL GOVERNMENTS: None--this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendments.

❖OTHER PERSONS: Providers may have to revise policies, but there should be an offset savings, since the rule eliminates the required policies for infection control committee, resident care policy committee, and a safety committee. After the facilities in-service director becomes knowledgeable about the rule changes, other staff can be trained during regular, already required, training hours. Although many of the intermediate care facilities currently have 24 hour licensed nurse coverage, 16 facilities may be affected by the requirement to add an additional 8 hours of coverage. If these facilities have to hire additional licensed nurses at \$16 per hour for 365 days per year, the annual cost to the facility may be \$70,080; if none of the facilities have this required coverage the total aggregate cost would be \$1,121,280. All providers are currently required to maintain employee staffing schedules and performance evaluations; however, the rule identifies the time period as the preceding 12 months. It is anticipated that there may be a savings if the providers saved these documents for a longer period of time, or an increased cost in storage space. This is thought to be offset by eliminating the minutes which were stored for the infection control committee, resident care policy committee and a safety committee. If providers have failed to provide locked storage for potentially dangerous recreational items, there will be an increased cost to purchase locks at \$5 each for an estimated 350 recreation cupboards resulting in an aggregate one-time expense of \$1,750. However, it is believed that all potentially dangerous items are currently secured in the nursing facilities. Additional one-time expenses would be to purchase an Occupational Safety and Health Administration (OSHA)-approved clean-up kit for blood borne pathogens and vehicle first-aid kit. It is believed that all providers currently have these items in the vehicles; however, the cost to the provider would be \$40. If none of the licensed facilities have these items in the vehicles, the one-time cost would be \$4,360. There may be an annual maintenance cost of \$10 to restock the supplies for an aggregate cost of \$1,090. If Intermediate Care Facility (ICF) providers have not provided or arranged for dental care for 497 residents, there may be an increased cost of providing dental care at \$50 annual cost per resident, aggregate cost of \$24,850. There is a realized savings to providers as the requirement for a certified dietary manager is deleted. The training for staff was \$50 per person. With the turnover in the industry, it is estimated that the facilities will save \$7,950 in

annual training costs. There is a savings for indirect and direct costs by eliminating the requirement to maintain an infection control committee, a resident care policy committee, and a safety committee. This deletion also eliminated the need to have the medical director attend these meetings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: See "Other persons" for individual and aggregate costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Department personnel have worked closely with the nursing home community to develop the changes in this proposed rule. The costs listed are maximums. Most of the facilities impacted by the change have already implemented the changes in order to maintain quality service to their residents. Previously the rules recognized a distinction between Intermediate Care Facilities (ICF) and Skilled Nursing Facilities (SNF). Some ICFs have had less than 24 hours nursing required to have 24 hour coverage. At least 50% of the ICFs already have this coverage, so the maximum cost of \$1,121,280 listed under "Other persons" overstates the actual impact on business. The industry indicates that this is a change that would be made with or without the rule, in order to distinguish nursing care from assisted living. This is an unusually complex rule change and careful review of comments may suggest the need for reevaluation of the costs on businesses prior to the rule becoming effective.

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

Health
Health Systems Improvement,
Health Facility Licensure
Cannon Health Building
288 North 1460 West
PO Box 142003
Salt Lake City, UT 84114-2003, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE 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@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Rod L. Betit, Executive Director

R432. Health, Health Systems Improvement, Health Facility Licensure.

~~[432-150. Nursing Care Facility Rules.~~

~~R432-150-1. General Provisions:~~

~~— R432-150-1 through R432-150-33 govern the operation of skilled level nursing care facilities.~~

R432-150-2. Legal Authority:

— This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-3. Purpose:

— The purpose of R432-150 is to provide health and safety standards for the organization, physical plant, maintenance, and operation of Nursing Care Facilities. The requirements of R432-150 promote quality of life and health care to a select and vital segment of our community's population and assist Nursing Care Facilities to recognize the individual and provide for the physical, mental, and social well-being of the whole person.

R432-150-4. Compliance:

— Facilities governed by R432-150 shall be in full compliance by at the time of licensure.

R432-150-5. Definitions:

— (1) Refer to R432-1-3.

— (2) Special definitions:

— (a) "Comprehensive Assessment" means the Department of Health designated Resident Assessment Instrument.

— (b) "Medically-related Social Services" means assistance provided by the facility social work staff to maintain or improve each resident's ability to control everyday physical, mental, and psychosocial needs:

— (c) "Nurse Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay:

— (d) "Practitioner" means nurse practitioner or physician assistant as licensed by the Utah Department of Commerce, Division of Occupational and Professional Licensing:

— (e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons:

R432-150-6. Scope of Skilled Level Services:

— (1) A skilled level nursing care facility shall maintain and operate 24-hour licensed nursing services:

— (2) The facility shall provide the following:

— (a) eight hours of registered nurse coverage in accordance with R432-150-19;

— (b) medical supervision;

— (c) dietary services;

— (d) physical therapy;

— (e) social services;

— (f) recreational therapy;

— (g) dental services;

— (h) pharmacy services.

— (3) The following services shall be provided as required for resident care and identified in the resident care plan:

— (a) respiratory therapy;

— (b) occupational therapy;

— (c) speech therapy;

— (d) other services as required to meet the needs of residents:

— (4) The facility shall not admit residents whose identified needs cannot be met:

— (5) Skilled Care Criteria:

— The following criteria apply in classifying a nursing care facility as skilled level:

— (a) the services provided are so inherently complex that they can only be safely and effectively performed by, or under the supervision of, professional and technical personnel;

— (b) services, which otherwise may ordinarily be classified as non-skilled, are required to be performed or supervised by skilled nursing or rehabilitation personnel due to medical complications or other extenuating conditions;

— (c) services are provided to prevent further deterioration or to preserve current capabilities:

— (6) Hospice Services:

— (a) If, during the care planning process for a terminally ill resident, bereavement services, clergy services, hospice counseling services, or volunteer services are determined to be appropriate under a hospice program of care, the facility shall provide the identified services in accordance with the applicable requirements of R432-750-14.

— (b) Facility staff responsible for delivering service shall be properly oriented and trained in the hospice concept and philosophy of care and the proper performance of assigned duties:

— (c) Nursing Care Facilities are not required to obtain a Hospice license:

— (7) Nursing Care Facilities may provide respite services which comply with the following:

— (a) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person:

— (b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14 days for any single respite stay. Stays which exceed 14 days shall be considered a nursing facility admission, and shall be subject to the admission requirements of R432-150:

— (c) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker:

— (d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program:

— (e) The facility must complete the following:

— (i) A Level 1 Preadmission Screening upon the persons admission for respite services:

— (ii) A service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders:

— (f) The facility shall have written policies and procedures available to staff regarding the respite care clients which include:

— (i) Medication administration;

— (ii) Notification of a responsible party in the case of an emergency;

— (iii) Service agreement and admission criteria;

— (iv) Behavior management interventions;

— (v) Philosophy of respite services;

— (vi) Post-service summary;

— (vii) Training and in-service requirement for employees; and

— (viii) Handling personal funds.

— (g) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

— (h) The facility shall maintain a record for each person receiving respite services which includes:

— (i) Retention and storage of records shall comply with R432-150-27(2);

— (ii) Confidentiality and release of information shall comply with R432-150-27(3);

— (iii) The record shall contain the following:

— (A) Service agreement;

— (B) Demographic information and resident identification data;

— (C) Nursing notes;

— (D) Physician treatment orders;

— (E) Records made by staff regarding daily care of the person in service;

— (F) Accident and injury reports;

— (G) Post-service summary.

— (i) If a person has an advanced directive, a copy shall be filed in the record and staff informed.

R432-150-7. Licensure:

— All standards of R432-2 and R432-3 apply to R432-150.

R432-150-8. General Construction:

— See R432-5. Nursing Facility Construction.

R432-150-9. Resident Rights:

— The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.

— (1) Protection of Resident Rights:

— The facility staff shall protect and promote the rights of each resident including:

— (a) the right to exercise his rights as a resident of the facility and as a citizen or resident of the United States;

— (b) the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his rights;

— (c) in the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the resident are exercised by a person appointed to act on behalf of the resident under state law.

— (2) Notice of Rights and Services:

— The facility shall inform the resident both orally and in writing in a language that the resident understands of his rights and all rules governing resident conduct and responsibilities during the stay in the facility.

— (a) Such notification shall be made prior to or upon admission and periodically during the resident's stay.

— (b) Receipt of such information, and any amendments to it, shall be acknowledged in writing.

— (3) Records:

— The resident has the right upon an oral or written request, to access all records pertaining to the himself, including clinical records, within 24 hours and to purchase at a cost not to exceed the community standard, photocopies of his records or any portions of his records upon request and two working days advance notice to the facility.

— (4) Information on health status:

— The resident has the right to be fully informed in language that he can understand of his total health status, including:

— (a) his medical condition;

— (b) the right to refuse treatment;

— (c) the right to formulate an advance directive in accordance with Section 75-2-1101.

— (d) the right to refuse to participate in experimental research;

— (5) Charges:

— The facility shall inform each resident or legal resident representative, before or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services.

— (a) The facility shall furnish a written description of legal rights which includes:

— (i) A description of the manner of protecting personal funds, in accordance with R432-150-9(8); and

— (ii) A statement that the resident may file a complaint with the State Long Term Care Ombudsman, and any other advocacy group, concerning resident abuse, neglect, and misappropriation of resident property in the facility.

— (6) Physician contact:

— The facility shall inform each resident of the name, specialty, and way of contacting the physician responsible for his care.

— (7) Notification of changes:

— (a) The facility shall immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or interested family member when there is:

— (i) an accident involving the resident which results in injury;

— (ii) a significant change in the resident's physical, mental, or psychosocial status including a deterioration in health, mental, or psychosocial status, in either life-threatening conditions or clinical complications;

— (iii) a need to alter treatment significantly, including a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment; or

— (iv) a decision to transfer or discharge the resident from the facility as specified in R432-150-10.

— (b) The facility shall promptly notify the resident and the resident's legal representative or interested family member when there is:

— (i) a change in room or roommate assignment; or

— (ii) a change in resident rights under state law or rules.

— (c) The facility shall record and periodically update the address and phone number of the resident's legal representative or interested family member.

— (8) Protection of Resident Funds:

— The resident has the right to maintain his financial affairs and the facility may not require a resident to deposit his personal funds with the facility.

— (a) Management of personal funds. Upon written authorization by a resident, the facility shall hold, safeguard, manage and account for the resident's personal funds deposited with the facility, in accordance with R432-150-9(8)(b).

— (b) Deposit of funds:

— (i) Funds in excess of \$50. The facility shall deposit any resident's personal funds in excess of \$50 in an interest bearing account that is separate from any of the facility's operating accounts.

— (A) Interest earned on the resident's account shall be credited to his account.

— (B) In pooled accounts there shall be a separate accounting for each resident's share, including interest.

— (ii) Funds less than \$50. The facility shall maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest bearing account, or petty cash fund.

— (c) Accounting and records. The facility shall establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

— (i) The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

— (ii) The individual financial record shall be available through quarterly statements on request to the resident or his legal representative.

— (d) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey within 30 days the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate.

— (e) Assurance of financial security. The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident's personal funds deposited with the facility are secure.

— (f) Conveyance upon discharge. Upon the discharge of a resident with a personal fund deposited with the facility, the facility shall convey as promptly as possible, but not to exceed ten business days, the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative.

— (9) Free Choice.

The resident has the right to:

— (a) choose a personal attending physician;

— (b) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being;

— (c) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

— (10) Privacy and Confidentiality.

The resident has the right to personal privacy and confidentiality of his personal and clinical records:

— (a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

— (b) The right to personal privacy does not require the facility to provide a private room.

— (c) Except as provided in R432-150-27, the resident may approve or refuse the release of personal and clinical records to any individual, or other entity, outside the facility.

— (d) The resident's right to refuse release of personal or clinical records does not apply when:

— (i) the resident is transferred to another health care institution; or

— (ii) record release is required by law.

— (11) Grievances.

A resident has the right to:

— (a) voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances;

— (b) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

— (c) The facility shall implement a process to promptly resolve resident grievances.

— (12) Examination of Survey Results.

A resident has the right to examine the results of the most recent survey of the facility conducted by state surveyors and any plan of correction in effect with respect to the facility.

— (a) The survey results and plan of correction, or a notice stating the survey results are available for review, shall be displayed in a public area of the facility easily accessible by the residents.

— (b) Receive information from agencies acting as resident advocates, and be afforded the opportunity to contact these agencies.

— (13) Work.

The resident has the right to:

— (a) refuse to perform work for the facility;

— (b) perform work for the facility, if he chooses, when:

— (i) the facility has documented the need or desire for work in the care plan;

— (ii) the plan specifies the nature of the work performed and whether the services are voluntary or paid;

— (iii) compensation for paid services is at or above prevailing rate for like work in the surrounding community; and

— (iv) the resident agrees to the work arrangement described in the care plan.

— (14) Mail.

The resident has the right to privacy in written communications, including the right to:

— (a) send and receive mail promptly that is unopened;

— (b) have access to stationery, postage and writing implements at the resident's own expense.

— (15) Access and Visitation Rights.

The resident has the right and the facility shall provide immediate access to any resident by the following:

— (a) representatives of the state in the due performance of their official responsibilities;

— (b) the resident's individual physician;

— (c) the State Long Term Care Ombudsman;

— (d) the agency responsible for the protection and advocacy system for developmentally disabled individuals as established under part C of the Federal Developmental Disabilities Assistance and Bill of Rights Act;

— (e) the agency responsible for the protection and advocacy system for mentally ill individuals as established under the Protection and Advocacy for Mentally Ill Individuals Act;

— (f) subject to the resident's right to deny or withdraw consent at any time:

— (i) advocacy groups representing specific segments of the resident population in nursing care facilities;

— (ii) immediate family or other relatives of the resident; and

— (iii) others who are visiting with the consent of the resident.

— (g) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or

other services to the resident, subject to the resident's right to deny or withdraw consent at any time:

—(h) The facility shall allow representatives of the State Long Term Care Ombudsman, to examine a resident's clinical records with the permission of the resident or the resident's legal representative:

—(16) Telephone:

The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

—(17) Personal Property:

The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents:

—(18) Married Couples:

Contingent on space and room availability, the resident has the right to share a room with one's spouse when both spouses live in the same facility and consent to the arrangement:

—(19) Self-administration of Drugs:

Each resident has the right to self-administer drugs if the interdisciplinary team for each resident that this practice is safe:

R432-150-10. Admission, Transfer, and Discharge:

—(1) Transfer and Discharge. The facility shall permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

—(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

—(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

—(c) The safety of individuals in the facility is endangered;

—(d) The health of individuals in the facility is endangered;

—(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

—(f) The facility ceases to operate.

—(2) Documentation. The facility shall document resident transfers or discharges under any of the circumstances specified in R432-150-10(1)(a) through (f), in the resident's clinical record. The documentation shall be made by:

—(a) the resident's physician when transfer or discharge is necessary under R432-150-10(1)(a) and (b);

—(b) a physician when transfer or discharge is necessary under R432-150-10(1)(c) and (d):

—(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

—(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner he understands, and, if known, to a family member or legal representative of the resident;

—(b) record the reasons in the resident's clinical record; and

—(c) include in the notice the items described in R432-150-10(5):

—(4) Timing of the notice:

—(a) Except when specified in R432-150-10(4)(b), the notice of transfer or discharge required under R432-150-10(2), shall be made by the facility at least 30 days before the resident is transferred or discharged:

—(b) Notice may be made as soon as practicable before transfer or discharge when:

—(i) the safety or health of individuals in the facility would be endangered;

—(ii) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

—(iii) an immediate transfer or discharge is required by the resident's urgent medical needs; or

—(iv) a resident has not resided in the facility for 30 days.

—(5) Contents of the notice. The written notice must include the following:

—(a) the reason for transfer or discharge;

—(b) the effective date of transfer or discharge;

—(c) the location to which the resident is transferred or discharged; and

—(d) the name, address, and telephone number of the State Long Term Care Ombudsman.

—(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act:

—(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

—(6) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility:

—(7) Notice of Bed-hold Policy and Readmission:

—(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies:

—(i) the facility's policies regarding bed-hold periods permitting a resident to return; and

—(ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility:

—(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, the facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy:

—(i) When transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer:

—(c) Permitting resident to return to facility. The facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility:

—(8) Equal Access to Quality Care:

A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment;

—(9) Admissions Policy:

Residents may be accepted for treatment and care only if the facility is properly licensed for the treatment required and has the

staff and resources to meet the medical, physical, and emotional needs of the resident.

~~— (10) Resident Care Policies.~~

~~— The facility shall have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.~~

~~— (11) Transfer Agreement.~~

~~— The facility shall have in effect a written transfer agreement with one or more hospitals that reasonably assures that:~~

~~— (a) residents shall be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;~~

~~— (b) medical and other information needed for care and treatment of residents, and, when the transferring facility determines whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, shall be exchanged between the institutions;~~

~~— (c) security and accountability of personal property of the individual transferred is maintained.~~

R432-150-11. Restraint and Behavior Management Policy.

~~— (1) Restraints.~~

~~— The resident has the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.~~

~~— (2) Restraints - General Policies.~~

~~— (a) Physical and chemical restraints shall be used to protect the resident from injury to himself or to others or to assist residents to attain and maintain optimum levels of physical and emotional functioning.~~

~~— (b) Restraints shall not be used for the convenience of staff, for punishment or discipline, or as substitutes for direct resident care, activities, or other services.~~

~~— (3) Definitions.~~

~~— (a) Simple safety devices are a type of physical restraint.~~

~~— (b) A physical restraint means any device intended to control or restrict the physical movement of a resident whether applied directly to the resident's body or applied indirectly to act as a barrier to voluntary movement.~~

~~— (c) A chemical restraint means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning.~~

~~— (d) Leather restraints, strait jackets, or locked restraints, other than simple single lock posey-type restraints, and bed sheets or other linens shall not be used as restraints.~~

~~— (e) Only the resident can place himself in a locked room.~~

~~— (4) Policies and Procedures.~~

~~— (a) The facility shall develop written policies and procedures to govern the use of physical and chemical restraints.~~

~~— (b) The major focus of these policies shall be on resident safety.~~

~~— (c) The Director of Nursing shall be responsible for in-service instruction on current restraint policies and rules for all staff involved in administering or monitoring the use of restraints.~~

~~— (d) Policies shall incorporate and address at least the following:~~

~~— (i) assessment criteria which includes:~~

~~— (A) appropriateness of use;~~

~~— (B) procedures for use;~~

~~— (C) purpose or nature of the restraint; and~~

~~— (ii) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used.~~

~~— (iii) guidelines for periodic release and position change or exercise, with instructions for documentation of this action.~~

~~— (5) Restraints shall not unduly hinder evacuation of the resident in the event of fire or other emergency.~~

~~— (6) When use of a restraint is implemented, the resident, next of kin, or legally designated representative shall be informed as soon as practicable of the reasons for the restraint and the circumstances under which the restraint shall be discontinued.~~

~~— (7) Restraints - Physical.~~

~~— (a) Physical restraints shall be authorized in writing.~~

~~— (i) Simple safety devices shall be authorized by a physician, licensed practitioner, the Director of Nursing, or a licensed nurse who is in charge of the unit.~~

~~— (ii) Physical restraints other than simple safety devices shall be authorized by a physician, physician assistant, or nurse practitioner.~~

~~— (iii) When the interdisciplinary team determines that restraint is necessary for behavior which interferes with resident treatment, there shall be an individualized treatment plan that deals with this disruptive episodic behavior and an ongoing monitoring system to assure effectiveness of the treatment.~~

~~— (b) Use of restraints, including simple safety devices, shall be reviewed routinely by the interdisciplinary team as the resident care conference is conducted, as the order is renewed by the physician, and on a day-to-day basis as care is delivered.~~

~~— (i) Review of restraint use shall be an ongoing process.~~

~~— (ii) Documentation in the resident's record shall include summaries and dates of the evaluations and reviews by the interdisciplinary team.~~

~~— (c) Use of physical restraints, including simple safety devices, shall be integrated into the resident care plan and used only when a specific hazard or need for restraint is present.~~

~~— (d) The resident care plan shall indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.~~

~~— (e) Physical restraints shall be applied properly, with minimum of discomfort, allowing sufficient body movement to ensure that circulation is not impaired.~~

~~— (f) No form of restraint shall be used or applied in such a manner as to cause injury or allow a potential for injury.~~

~~— (g) Use of the restraint or safety device and the resident's response shall be documented in the resident's medical record.~~

~~— (h) Periodic release and position change or exercise shall be documented.~~

~~— (i) At a minimum, opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which restraints of any type are employed, except when the resident is sleeping.~~

~~— (ii) More frequent checks and position changes shall be required in some cases as determined by the specific needs of the resident.~~

— (i) Physical restraints may be used without prior approval by a physician, physician assistant, or nurse practitioner in an emergency only if the following conditions are met and documented:

— (i) There is a written policy for emergency use of such devices:

— (ii) The Director of Nursing is notified as soon as possible, but no later than the beginning of the day shift, of the emergency use of restraints:

— (iii) The attending physician is notified as soon as possible, but at least within 24 hours, of the application of restraints:

— (iv) There is documentation in the resident's medical record of the circumstances necessitating emergency use of the restraint and the resident's response:

— (8) Restraints - Chemical:

— Chemical restraints used for sedation, other than those prescribed to promote sleep or treatment of psychiatric illnesses, may be used when alternative non-pharmacological interventions are assessed and documented as ineffective:

— (a) When the interdisciplinary team determines that the restraint is necessary for behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment:

— (b) Any medication, including chemical restraints, must be ordered by the resident's physician or by a person legally authorized to prescribe the particular medication:

— (c) Use of chemical restraints shall be reviewed routinely by the interdisciplinary team as the resident care conference is conducted, as the order is renewed by the physician, and on a day-to-day basis as care is delivered:

— (i) Review of the use of chemical restraints shall be an ongoing process:

— (ii) The resident shall be monitored for adverse effects that significantly hinder verbal, emotional, or physical summaries:

— (iii) Dates of the evaluations and reviews by the interdisciplinary team shall be documented:

— (d) Use of the chemical restraint shall be integrated into the resident care plan and used only for the purpose authorized by the physician:

— (e) Any medication given to a resident shall be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility:

— (f) Drug holidays shall be initiated in accordance with R432-150-18(12)(b):

— (9) Behavior Management:

— (a) Facility policy shall establish criteria for admission and retention of residents who require behavior management programs, and shall specify the data to be collected and the location of the data in the clinical record:

— (b) The program may be used only after the environmental and social factors which are likely to precipitate or reinforce the inappropriate behavior are identified and an attempt is made to effect remedial change:

— (c) The program shall be developed by the interdisciplinary team which shall include a psychiatrist, a licensed clinical psychologist, or a licensed MSW with clinical experience:

— (i) There shall be an opportunity for involvement of the resident, next of kin, or legally designated representative:

— (ii) A behavior management program shall be approved for a resident by a physician:

— (d) Behavior management programs shall employ the least restrictive methods to produce the desired outcomes and incorporate a process to identify and reinforce a more desirable behavior:

— (e) Consent for use of any behavior management program shall be obtained from the resident, next of kin, or legally designated representative, or in their absence, from an interdisciplinary team which must include a resident advocate not employed by the facility:

— (f) A competent resident shall have the ultimate decision whether to participate in a behavioral management program. The interdisciplinary team shall meet as necessary to review such programs:

— (g) The behavior management program shall be incorporated into the resident care plan:

— (h) The behavior management program shall be reviewed routinely by the interdisciplinary team as the resident care conference is conducted, as the order is renewed by the physician, and on a day-to-day basis as care is delivered:

— (i) Review of the behavior management program shall be an ongoing process:

— (j) Documentation in the resident's record shall include:

— (i) a behavior baseline profile, including a description of the undesirable behavior, and a statement whether there is a known history of previous undesirable behaviors and prior treatment;

— (ii) conditions under which the behavior occurs;

— (iii) interventions used and their results;

— (iv) a behavior management program including specific measurable behavioral objectives, time frames, names, titles, and signatures of the persons responsible for conducting the program; and monitoring and evaluation methods;

— (v) summaries and dates of the evaluations and reviews by the interdisciplinary team:

R432-150-12. Abuse Policy.

— The resident has the right to be free from verbal, sexual, physical or mental abuse, corporal punishment, and involuntary seclusion:

— (1) Staff Treatment of Residents:

— The facility staff shall develop and implement written policies and procedures that prohibit mistreatment, neglect, or abuse of residents or misappropriation of resident property:

— (2) The facility staff shall not:

— (a) use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; or

— (b) knowingly employ individuals who have been convicted of abusing, neglecting, or mistreating individuals:

— (3) The facility shall ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility and to other officials in accordance with Section 62A-3-302 of the Adult Protective Services Law:

— (4) The facility shall maintain incident reports documenting that all alleged violations are thoroughly investigated internally, and shall prevent further potential abuse while the investigation is in progress:

— (5) The results of all internal investigations shall be reported immediately to the administrator or his designated representative or to other appropriate officials.

— (6) If the alleged violation is verified, the facility shall take appropriate corrective action and document the action taken.

— (7) The licensee shall provide an annual in-service on reporting suspected abuse, neglect or exploitation and document that all staff have attended the annual in-service. This record shall be maintained for Department review.

R432-150-13. Quality of Life.

— A facility shall care for residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life:

— (1) Dignity:

— The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his individuality.

— (2) Self-determination and Participation:

— The resident has the right to:

— (a) choose activities, schedules, and health care consistent with his interests, assessments and care plan;

— (b) interact with members of the community both inside and outside the facility;

— (c) make choices about aspects of his life in the facility that are significant to the resident.

— (3) Participation in Resident and Family Groups:

— (a) A resident has the right to organize and participate in resident groups in the facility.

— (b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

— (c) The facility shall provide a resident or family group, if one exists, with private space.

— (d) Staff or visitors may attend meetings at the group's invitation.

— (e) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

— (f) When a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

— (4) Participation In Other Activities:

— A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

— (5) Accommodation of Needs:

— A resident has the right to:

— (a) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

— (b) receive notice before the resident's room or roommate in the facility is changed.

R432-150-14. Activities.

— The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive

assessment, the interests and the physical, mental, and psychosocial well being of each resident.

— (1) The activities program shall be directed by a qualified recreational therapist licensed in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

— (2) The activities staff shall:

— (i) develop therapeutic recreation schedules that include the activity and the location;

— (ii) develop monthly activity calendars for residents activities;

— (iii) make the calendar available to residents, staff, and visitors.

— (3) Each facility shall supply a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

R432-150-15. Social Services.

— The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental, or psychosocial well-being of each resident.

— (1) Social services shall be provided by qualified persons under a clearly defined plan.

— (2) The plan shall be based on a psychosocial assessment which identifies the social and emotional needs of each resident.

— (3) A Certified Social Worker, or a Social Service Worker working under the supervision of a Certified Social Worker, shall complete the assessment. An assessment prepared by a Social Service Worker shall be reviewed, countersigned, and titled by the supervising Certified Social Worker.

— (a) If a Social Service Worker provides services, that individual shall consult with a Certified Social Worker who is under contract with the facility to provide consultant services.

— (b) Consultations by the Certified Social Worker shall be documented in writing.

— (4) A facility with 120 beds or more shall employ a full-time qualified social worker.

— (5) Social services shall be provided in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act.

R432-150-16. Environment.

— The facility shall provide:

— (1) a safe, clean, comfortable environment, allowing the resident to use his personal belongings to create a homelike environment;

— (2) housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior shall conform with the following;

— (a) If the facility contracts for housekeeping services with an outside agency, there shall be signed and dated contracts for housekeeping services that details all services provided.

— (b) The administrator shall employ a qualified person to direct the housekeeping services.

— (c) Written housekeeping policies and procedures shall be developed and implemented by each facility which include:

— (i) Policies and procedures shall be reviewed and updated annually;

— (ii) Policies and procedures shall address personnel; maintenance schedules, equipment and supplies.

— (d) The facility shall employ a sufficient number of housekeeping and maintenance staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

— (i) Housekeeping personnel shall be trained in proper procedures for cleaning rooms and equipment, and in handling clean and soiled linen, trash, and trays.

— (ii) Housekeeping and laundry personnel may not be engaged simultaneously in food service or direct resident care. A facility policy shall be established and followed to govern the transition from housekeeping and laundry services to resident care.

— (3) clean bed and bath linens that are in good condition;

— (4) adequate equipment in good working order to meet the needs of residents;

— (5) private closet space in each resident room;

— (6) adequate and comfortable lighting levels in accordance with R432-150-26(4);

— (7) comfortable and safe temperature levels;

— (8) comfortable sound levels;

— (9) If used, disposable and single-use items shall be of quality sufficient to meet the needs of residents.

— (10) Smoking policies shall comply with R432-149-12.

R432-150-17. Resident Assessment.

— The facility shall conduct initial and periodic comprehensive, accurate, standardized, reproducible assessments of each resident's functional capacity:

— (1) Admission Orders.

— At the time a resident is admitted, the facility shall obtain physician orders for the resident's immediate care in accordance with R432-150-17.

— (2) Comprehensive Assessments.

— (a) Using the Department designated format, the facility shall complete a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity:

— (b) The comprehensive assessment must include at least the following information:

— (i) medically defined conditions and prior medical history;

— (ii) medical status measurement;

— (iii) physical and mental functional status;

— (iv) sensory and physical impairments;

— (v) nutritional status and requirements;

— (vi) special treatments or procedures;

— (vii) mental and psychosocial status;

— (viii) discharge potential;

— (ix) dental condition;

— (x) activities potential;

— (xi) rehabilitation potential;

— (xii) cognitive status;

— (xiii) drug therapy.

— (c) The facility shall complete the initial assessment and subsequent revisions as follows:

— (i) Initial assessments shall be completed within 14 calendar days of admission;

— (ii) Revisions to the initial assessment shall be completed no later than 21 calendar days from admission;

— (iii) A significant change in resident's physical or mental condition shall require an interdisciplinary team review and may

require a complete new assessment to be completed within 14 calendar days of the condition change;

— (iv) At a minimum, three quarterly reviews and one full assessment shall be completed in each 12 month period.

— (v) The results of the assessment shall be used to develop, review, and revise the resident's comprehensive care plan, in accordance with R432-150-17(2).

— (3) Accuracy of Assessments.

— (a) Coordination:

— (i) Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

— (ii) Each assessment shall be conducted or coordinated with the appropriate participation of health professionals.

— (b) Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

— (c) Use of independent assessors. If the state determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements under R432-150-17(3)(b); the state may require, for a period specified, that resident assessments under this subsection be conducted and certified by state-approved individuals who are independent of the facility.

— (4) Comprehensive Care Plans.

— (a) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs as identified in the comprehensive assessment.

— (b) A comprehensive care plan shall be:

— (i) developed within seven days after completion of the comprehensive assessment;

— (ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or legal representative, to the extent practicable;

— (iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

— (c) The services provided or arranged by the facility shall:

— (i) meet professional standards of quality;

— (ii) be provided by qualified persons in accordance with the resident's written care plan.

— (5) Staff qualifications.

— (a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of:

— (b) a final summary of the resident's status to include items in R432-150-17(2)(a), which is prepared at the time of the discharge and is available for release to authorized persons and agencies, with the consent of the resident or legal representative;

— (c) a post-discharge care plan, developed with the participation of the resident and his family, to assist the resident to adjust to his new living environment;

— (d) in cases where a discharge is based on the inability of the facility to meet the resident's needs, a detailed explanation of why the resident's needs could not be met.

R432-150-18. Quality of Care:

The facility shall provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and care plan:

~~— (1) Activities of Daily Living:~~

~~(a) Activities of daily living include the resident's ability to:~~

~~(i) bathe, dress, and groom;~~

~~(ii) transfer and ambulate;~~

~~(iii) use the toilet;~~

~~(iv) eat;~~

~~(v) use speech, language, or other functional communication systems.~~

~~(b) Based on the resident's comprehensive assessment, the facility shall ensure that:~~

~~(i) resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;~~

~~(ii) a resident is given the treatment and services to maintain or improve his abilities specified in R432-150-18(1);~~

~~(iii) a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.~~

~~— (2) Vision and Hearing:~~

~~To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility shall, if necessary, assist the resident:~~

~~(a) in making appointments;~~

~~(b) by arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.~~

~~— (3) Pressure Sores:~~

~~Based on the comprehensive assessment of a resident, the facility shall ensure that:~~

~~(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable;~~

~~(b) resident having pressure sores receives necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.~~

~~— (4) Incontinence:~~

~~Based on the resident's comprehensive assessment, the facility shall ensure that:~~

~~(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;~~

~~(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;~~

~~(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections.~~

~~(d) A licensed nurse shall complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.~~

~~— (5) Range of Motion:~~

~~Based on the comprehensive assessment of a resident, the facility must ensure that:~~

~~(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable;~~

~~(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.~~

~~— (6) Psychosocial Functioning:~~

~~Based on the comprehensive assessment of a resident, the facility shall ensure that the psychosocial function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psychosocial function was unavoidable. The facility shall ensure that:~~

~~(a) A resident who displays psychosocial adjustment difficulty receives treatment and services to achieve as much remotivation and reorientation as possible; and~~

~~(b) A resident whose assessment does not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.~~

~~— (7) Naso-gastric Tubes:~~

~~Based on the comprehensive assessment of a resident, the facility shall ensure that:~~

~~(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and~~

~~(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.~~

~~— (8) Accidents:~~

~~The facility shall ensure that:~~

~~(a) the resident environment remains as free of accident hazards as is possible; and~~

~~(b) each resident receives adequate supervision and assistive devices to prevent accidents.~~

~~— (9) Nutrition:~~

~~Based on a resident's comprehensive assessment, the facility shall ensure that a resident:~~

~~(a) maintains acceptable nutritional status parameters, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible;~~

~~(b) receives a therapeutic diet when there is a nutritional problem.~~

~~— (10) Hydration:~~

~~The facility shall provide each resident with sufficient fluid intake to maintain proper hydration and health.~~

~~— (11) Special Needs:~~

~~The facility shall ensure that residents receive proper treatment and care for the following special services:~~

~~(a) injections;~~

~~(b) parenteral and enteral fluids;~~

~~(c) colostomy, ureterostomy, or ileostomy care;~~

~~(d) tracheostomy care;~~

~~(e) tracheal suctioning;~~

- (f) respiratory care;
- (g) foot care;
- (h) prostheses.
- (12) Drug Therapy:
 - Each resident's drug regimen shall be free from unnecessary drugs and the facility shall ensure that:
 - (a) residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record;
 - (b) residents who use antipsychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.
- (13) Medication Errors:
 - The quality assurance committee shall ensure that:
 - (a) The facility does not have medication error rates of five percent or greater, and
 - (b) Residents are free of any significant medication errors.

R432-150-19. Nursing Services:

- The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual care plans:
 - (1) Sufficient Staff:
 - (a) The facility shall provide licensed nurses and other nursing personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans.
 - (b) The facility shall designate a licensed nurse to serve as a charge nurse on each tour of duty.
 - (2) Registered Nurse:
 - (a) The facility shall provide the services of a registered nurse for at least eight consecutive hours a day, seven days a week.
 - (b) The facility shall designate a registered nurse to serve as the Director of Nursing on a full-time basis.
 - (c) The Director of Nursing may serve as a charge nurse only when the facility has a daily occupancy of 60 or fewer residents.
 - (3) Time Records for Nurse Aides:
 - The facility shall provide the nursing care required by each resident. Aides performing housekeeping, dietary, or other functions shall maintain time records reflecting the time spent in nursing care and other tasks.

R432-150-20. Dietary Services:

- The facility shall provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident:
 - (1) Staffing:
 - (a) The facility shall employ a qualified dietitian either full-time, part-time, or on a consultant basis.
 - (b) A qualified dietitian is one who is certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.
 - (c) If a qualified dietitian is not employed full-time, the facility shall designate a full-time qualified person to serve as the dietetic supervisor.
 - (d) A qualified dietetic supervisor shall have completed one of the following requirements:

- (i) have training or experience in food service supervision and management equal to 90 or more hours of classroom instruction in food service supervision;
- (ii) be a graduate of a state-approved program that provides 90 or more hours of classroom instruction in food service supervision;
- (iii) be a graduate of a Dietetic Technician or Dietetic Assistant training program approved by the American Dietetic Association (ADA);
- (iv) have a bachelor's degree with major study in food and nutrition, dietetics, or food management and one year experience in the dietetic service of a health care institution;
- (v) be a dietitian or eligible for registration as a dietitian with the ADA.
- (e) If the dietetic supervisor is not a certified dietitian, there shall be at least monthly documented consultation with a certified dietitian.
- (F) The consulting dietitian shall schedule visits when the dietetic supervisor is available.
- (2) Sufficient Staff:
 - The facility shall employ support personnel to carry out the functions of the dietary service:
- (3) Menus and Nutritional Adequacy:
 - Menus shall:
 - (a) meet the nutritional needs of residents, to the extent medically possible;
 - (b) be prepared in advance;
 - (c) be followed;
 - (d) be different each day; and
 - (e) be posted for each day of the week.
 - (4) Food:
 - Each resident shall be offered and the facility shall provide:
 - (a) food prepared by methods that conserve nutritive value, flavor and appearances;
 - (b) food that is palatable, attractive, and at the proper temperature;
 - (c) food prepared in a form designed to meet individual needs; and
 - (d) substitutes of similar nutritive value to residents who refuse food served.
 - (5) Diets:
 - All diets shall be prescribed by the attending physician.
 - (6) Frequency of Meals:
 - (a) Each resident shall be offered and the facility shall provide at least three meals daily, at reasonable times comparable to normal mealtimes in the resident community.
 - (b) There shall be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in R432-150-20(6)(d).
 - (c) The facility shall offer bedtime snacks daily.
 - (d) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if the resident group agrees to this meal span.
 - (7) Assistive Devices:
 - The facility shall provide special eating equipment and utensils for residents who need them.
 - (8) Sanitary Conditions:
 - The facility shall:
 - (a) procure food from sources approved or considered satisfactory by federal, state, or local authorities;

— (b) store, prepare, distribute, and serve food under sanitary conditions in accordance with state and local health departments' food service and sanitation rules;

— (9) Food Storage:

— A one-week supply of nonperishable staple foods and a three-day supply of perishable foods for three meals per day, per resident, shall be maintained in the facility. A supply of food items to complete the established menu shall be maintained:

R432-150-21. Physician Services:

— (1) A physician shall personally approve in writing a recommendation that an individual be admitted to a facility:

— (a) Each resident shall remain under the care of a physician, licensed in Utah, to deliver the scope of services required by the resident:

— (b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a facility pending personal review by the physician:

— (2) Medical Supervision:

— The facility shall ensure that:

— (a) the medical care of each resident is supervised by a physician:

— (b) when a resident's attending physician is unavailable, another qualified physician shall supervise the medical care of the resident:

— (c) The following professionals may render medical services to residents in the facility:

— (i) nurse practitioners licensed to practice in Utah, Section 58-31;

— (ii) physician assistants working under the responsibility and supervision of a physician licensed in Utah and performing only those selected diagnostic and therapeutic tasks identified in the physician assistant's utilization plan as submitted to the Division of Occupational and Professional Licensing, Department of Commerce, Title 58, Chapter 12:

— (3) Physician Visits:

— The physician shall:

— (a) review the resident's total program of care, including medications and treatments, at each visit;

— (b) write, sign, and date progress notes at each visit;

— (c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants;

— (d) sign all orders.

— (4) Frequency of Physician Visits:

— Physician visits shall conform to the following:

— (a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who shall be providing care to the resident at the facility:

— (b) The resident shall be seen by the physician within five days of admission to a facility when admission is initiated by a nurse practitioner or physician assistant working under the direction of the physician:

— (c) The resident shall be seen by a physician at least once every 30 days for the first 90 days after admission and at least every 60 days thereafter:

— (d) A physician visit is considered timely if it occurs not later than ten days after the date the visit was required:

— (e) Except as required by R432-150-21(4)(f), all required physician visits shall be made by the physician personally:

— (f) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner:

— (5) Availability of Physicians for Emergency Care

— The facility shall provide or arrange for the provision of physician services 24 hours a day, in case of an emergency:

— (6) Physician Delegation of Tasks

— A physician may delegate tasks to a physician assistant or nurse practitioner who is acting within the scope of practice as defined by R156-12-77 and R156-31-3(k):

R432-150-22. Specialized Rehabilitative Services:

— (1) A facility shall provide for, or obtain from an outside source, rehabilitative services which may include:

— (a) physical therapy;

— (b) speech-language pathology;

— (c) occupational therapy, and

— (d) health rehabilitative services for mental illness and mental retardation, as identified in a resident's comprehensive care plan:

— (2) Specialized rehabilitative services shall be provided under the written order of a physician or by qualified personnel:

R432-150-23. Dental Services:

— The facility shall assist residents in obtaining routine and 24-hour emergency dental care:

— (1) The facility shall provide or obtain from an outside resource, routine and emergency dental services to meet the needs of each resident:

— (2) The facility shall refer residents with lost or damaged dentures to a dentist:

R432-150-24. Pharmacy Services:

— The facility shall provide routine and emergency drugs and biologicals to its residents, or obtain them under written agreement:

— (1) Procedures:

— A facility shall provide pharmaceutical services, including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals, to meet the needs of each resident:

— (2) Service Consultation:

— The facility shall employ or obtain the services of a licensed pharmacist who:

— (a) provides consultation on all aspects of pharmacy services in the facility;

— (b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

— (c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly:

— (3) Drug Regimen Review:

— The drug regimen of each resident shall be reviewed at least once a month by a licensed pharmacist:

— (a) The pharmacist shall report any irregularities to the attending physician and the Director of Nursing:

— (b) The physician and the Director of Nursing shall indicate acceptance or rejection of the report and document any action taken:

~~— (4) Labeling of Drugs and Biologicals.~~

~~— Facility personnel shall check to insure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date, when required by state law or rule.~~

~~— (5) Storage of Drugs and Biologicals.~~

~~— The facility shall store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-24(5)(e), and permit only authorized personnel to have access to the keys.~~

~~— (a) The facility shall provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.~~

~~— (b) Provision shall be made for the separate secure storage of all non-medication items such as poisonous and caustic materials.~~

~~— (c) Containers shall be clearly labeled.~~

~~— (d) Medication intended for internal use shall be stored separately from medication intended for external use.~~

~~— (e) The facility shall maintain temperatures for the storage of medications.~~

~~— (i) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.~~

~~— (ii) Refrigerated medications shall be maintained within 36 and 46 degrees F.~~

~~— (6) Emergency Drug Supply. An emergency drug supply shall be maintained in the facility.~~

~~— (a) Specific drugs and dosages to be included in the emergency drug supply shall be listed.~~

~~— (b) Containers shall be sealed to prevent unauthorized use.~~

~~— (c) Contents of the emergency drug supply shall be listed on the outside of the container and the use of contents shall be documented by the nursing staff.~~

~~— (d) The emergency drug supply shall be stored and located for access by the nursing staff.~~

~~— (e) The pharmacist shall inventory the emergency drug supply monthly.~~

~~— (f) Used or outdated items shall be replaced within 72 hours by the pharmacist.~~

~~— (7) Pharmacy Supply.~~

~~— The pharmacy shall dispense and the facility shall ensure that necessary drugs and biologicals are provided on a timely basis.~~

~~— (8) Automatic-Stop Order.~~

~~— The facility shall limit the duration of a drug order in the absence of the prescriber's specific instructions.~~

~~— (9) Drug References.~~

~~— Drug references shall be available on all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.~~

~~— (10) Discharged-Resident Drugs.~~

~~— Drugs may be sent with the resident upon discharge if so ordered by the discharging physician.~~

~~— (a) Such drugs shall be released in compliance R156-17-24.~~

~~— (b) A record of the drugs sent with the resident shall be noted in the resident's health record.~~

R432-150-25. Infection Control.

~~— (1) Infection Control Committee. There shall be an Infection Control Committee composed of the administrator, medical director/advisory physician, director of nursing services, staff or consulting pharmacist, and, when appropriate, the building engineer or director of maintenance. Representatives from each service offered by the facility shall be available as consultants.~~

~~— (2) The Committee shall:~~

~~— (a) Adopt a definition of nosocomial infections;~~

~~— (b) Develop and implement a system to investigate, report, evaluate, and maintain records of infections among residents and personnel;~~

~~— (c) Establish uniform cleaning, disinfecting, and sterilization practices and techniques to include:~~

~~— (i) Care of utensils, instruments, solutions, dressings, articles and surfaces;~~

~~— (ii) Resident contact techniques including handwashing before and after resident care;~~

~~— (iii) Criteria and procedures for isolating residents;~~

~~— (iv) Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices that provide an entry portal for pathogenic microorganisms;~~

~~— (v) Regimen to prevent and treat decubitus ulcers;~~

~~— (vi) Selection, storage, use, and disposition of disposable resident care items;~~

~~— (vii) Selection, storage, use, and disposition of hypodermic needles;~~

~~— (3) Develop criteria to determine if an employee has a communicable disease or conditions that may interfere with adequate job performance;~~

~~— (4) Review written reports of state and local sanitary inspectors;~~

~~— (5) Promptly notify the administrator and local and state health authorities when there is an unusual or high incidence of infectious disease.~~

~~— (6) Preventing Spread of Infection:~~

~~— (a) When a resident has a condition that requires use of isolation techniques to prevent the spread of infection to other staff and residents within the facility, the facility shall adopt the isolation technique to be used to prevent the spread of infection or disease within the facility.~~

~~— (b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis from contact with residents, their personal or resident care items, or their food, if contact may result in the transmission of the infection or disease.~~

~~— (c) Facility staff shall wash their hands before and after each prolonged and intense resident contact, after removing personal protective equipment, after using equipment, after using the restroom, before any food handling including assisting or feeding a resident and after contact with any item contaminated by a residents body substance.~~

~~— (d) The facility shall ensure adherence to accepted professional practice for universal precautions. The CDC's Guidelines for universal precautions is one recommended source of practice.~~

— (e) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.

— (7) Linens:

— Personnel shall handle, store, process, and transport linens so as to prevent the spread of infection.

R432-150-26. Administration:

— A facility shall be administered in a manner that uses its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

— (1) State and Local Laws:

— (a) A skilled nursing facility shall be licensed in accordance with R432-2:

— (b) The facility shall operate and provide services in compliance with all applicable state and local laws, rules, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility:

— (c) The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility and for assuring the health and safety of the facility residents:

— (2) Governing Body:

— (a) The facility shall have a governing body, or designated persons functioning as a governing body, that is legally authorized to establish and implement policies regarding the management and operation of the facility:

— (b) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of their rights:

— (c) The governing body shall provide a written document appointing the administrator:

— (3) Administrator:

— The designated administrator shall:

— (a) be licensed by the state, pursuant to Title 58, Chapter 15;

— (b) be responsible for management of the facility;

— (c) supervise no more than one facility;

— (d) have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility; and

— (e) designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this subsection to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator:

— (f) Responsibilities:

— (i) The administrator's responsibilities shall be included in a written job description on file in the facility:

— (ii) The job description shall be available for Department review and include at least the following:

— (iii) Complete, submit, and file all records and reports required by the Department;

— (iv) Act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility:

— (v) Respond to recommendations made by the quality assurance committee;

— (vi) Assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

— (vii) Implement policies and procedures for the operation of the facility;

— (viii) Hire and maintain the required number of licensed and nonlicensed staff to meet the needs of residents;

— (ix) Maintain facility staffing records for the preceding 12 months;

— (x) Secure and update contracts for required professional and other services not provided directly by the facility;

— (xi) Verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

— (xii) Review all incident and accident reports and document the action taken or reason for no action:

— (A) Incident and accident reports shall be numbered and logged in a manner to account for all reports:

— (B) Incident and accident reports shall have space for written comments by the administrator and medical director:

— (C) Original incident and accident reports shall be kept on file in the facility and shall be available for review by the Department:

— (4) Staff In-service Training:

— (a) There shall be planned and documented orientation and in-service training for all facility personnel covering all topics pertinent to the performance of assigned duties and responsibility:

— (b) A minimum of six in-service training sessions shall be conducted in each 12-month period:

— (5) Staff Qualifications:

— (a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of this rule:

— (b) All staff shall be licensed, certified or registered in accordance with applicable state laws:

— (c) The facility shall maintain a copy of the staff's current registration or certification for Department review:

— (d) Failure by the facility to ensure that all staff are registered, certified or licensed as required by the Utah Department of Commerce may result in sanctions to the facility license:

— (6) Health Surveillance:

— (a) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered:

— (b) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired:

— (c) The health inventory shall obtain at least the employee's history of the following:

— (i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

— (ii) condition which may prevent the employee from performing certain assigned duties satisfactorily;

— (d) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704 Communicable Disease Rules:

— (e) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5; Special Measures for control of Tuberculosis:

— (i) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis:

— (ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

— (iii) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

— (7) Required Training of Nurse Aides.

— (a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a training and testing program.

— (b) Prior to employing an individual as a nurse aide, the responsible staff member in the facility shall, by submitting the applicant's name and other identifying information to the Department of Education's statewide nurse aide registry, determine that a verified report of resident abuse, neglect, or exploitation by that person has not been recorded. If such a verified report exists, the applicant shall not be employed.

— (c) When an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

— (d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

— (e) In-service education shall include training for individuals providing nursing and nursing-related services for residents with cognitive impairments.

— (8) Proficiency of Nurse Aides.

— The facility shall ensure that nurse aides are able to demonstrate proficiency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and as described in the resident care plan.

— (9) Use of Outside Resources.

— (a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility shall have that service furnished to residents by a person or agency outside the facility.

— (b) Arrangements or agreements pertaining to services furnished by outside resources shall be specified in writing.

— (c) When services are arranged with an outside resource, the facility retains responsibility for:

— (i) obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility, and

— (ii) the timeliness of the services.

— (10) Medical Director.

— (a) The facility shall designate a physician to serve as medical director.

— (b) The medical director is responsible for:

— (i) implementation of resident care policies; and

— (ii) the coordination of medical care in the facility.

— (11) Laboratory Services.

— (a) The facility shall provide or obtain clinical laboratory services to meet the needs of its residents.

— (b) A physician or a person licensed to prescribe shall order the laboratory services. The order shall be documented in the resident's medical record.

— (c) The facility staff shall promptly notify the attending physician of the laboratory findings.

— (d) The facility shall assist the resident in making transportation arrangements to and from the source of services, if the resident needs assistance.

— (e) Services shall be performed by qualified providers acceptable to the Department.

— (f) If the facility provides its own laboratory service, these services shall comply with R432-100-26.

— (12) Radiology and Other Diagnostic Services.

— (a) The facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents.

— (i) If the facility provides its own radiology or diagnostic services, the services must meet the requirements set forth in R432-100-29.

— (ii) If the facility does not provide radiology or diagnostic services, it shall have an agreement to obtain these services.

— (b) The facility shall:

— (i) provide or obtain radiology and other diagnostic services only when ordered by the attending physician and licensed practitioner;

— (ii) promptly notify the attending physician of the radiological, or other diagnostic test findings;

— (iii) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

— (iv) file in the resident's clinical record signed and dated reports of radiological and other diagnostic services.

R432-150-27. Medical Records.

— (1) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation of information. There shall be written policies and procedures to accomplish these purposes.

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

— (a) The medical records department shall be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

— (b) If an RRA or ART is not employed at least part time, the facility shall consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

— (3) Retention and Storage.

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

— (b) Medical records shall be protected against access by unauthorized individuals.

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

— (4) Confidentiality and Release of Information.

— (a) Medical record information shall be confidential.

— (b) The Nursing Care Facility may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

~~— (c) The Nursing Care Facility shall obtain consent from the resident before releasing resident information identifying the resident, including photographs, unless release is otherwise allowed or required by law.~~

~~— (5) Content of Medical Records:~~

~~— (a) The nursing care facility shall maintain an individual medical record for each resident which shall include written documentation of the following:~~

~~— (i) records made by staff regarding daily care of the resident;~~

~~— (ii) informative progress notes by staff to record changes in the resident's condition which describe the resident's needs and response to care and treatment in accordance with the care plan;~~

~~— (iii) pre-admission screening;~~

~~— (iv) admission record with demographic information and resident identification data;~~

~~— (v) history and physical examination up-to-date at the time of the resident's admission;~~

~~— (vi) written and signed informed consent;~~

~~— (vii) orders by a clinical staff member;~~

~~— (viii) record of assessments, including the comprehensive resident assessment, care plan, and services provided;~~

~~— (ix) nurses notes;~~

~~— (x) monthly nursing summaries;~~

~~— (xi) quarterly resident assessments;~~

~~— (xii) record of medications and treatments administered;~~

~~— (xiii) laboratory and radiology reports;~~

~~— (xiv) discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate.~~

~~— (b) All entries into the medical record shall be authenticated including date, name or identifier initials, and title of the person making the entries.~~

R432-150-28. Disaster and Emergency Preparedness.

~~— (1) The licensee and the administrator shall be responsible for the development of a plan, coordinated with the state and local emergency disaster authorities, to respond to emergencies and disasters.~~

~~— (2) This plan shall be in writing and shall be distributed or made available to all facility staff and residents to assure prompt and efficient implementation.~~

~~— (3) The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.~~

~~— (4) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, appropriate communication and emergency transport systems shall be posted.~~

~~— (5) Emergency Procedures:~~

~~The facility's response procedures shall address the following:~~

~~— (a) evacuation of occupants to a safe place within the facility or to another location;~~

~~— (b) delivery of essential care and services to facility occupants by alternate means;~~

~~— (c) delivery of essential care and services when additional persons are housed in the facility during an emergency;~~

~~— (d) delivery of essential care and services to facility occupants when staff are reduced by an emergency;~~

~~— (e) maintenance of safe ambient air temperatures within the facility.~~

~~— (i) Emergency heating must have the approval of the local fire department.~~

~~— (ii) Ambient air temperatures of 58 degrees F or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the resident.~~

~~— (iii) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility, that may exacerbate the medical condition of residents.~~

~~— (f) The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures. Drills, practices and training shall be documented.~~

R432-150-29. Quality Assessment and Assurance.

~~— (1) The facility shall maintain a multidisciplinary quality assessment and assurance committee which includes:~~

~~— (a) The director of Nursing Services;~~

~~— (b) The medical director;~~

~~— (c) A representative from facility administration; and~~

~~— (d) At least three other members of the facility's staff.~~

~~— (2) The quality assessment and assurance committee shall:~~

~~— (a) review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care and safety;~~

~~— (b) meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary;~~

~~— (c) develop and implement plans of action to correct identified quality deficiencies;~~

~~— (d) evaluate action plan outcomes;~~

~~— (e) submit a report of Committee findings and concerns to the administrator and licensee for action.~~

R432-150-30. Pets in Long-Term Care Facilities.

~~— (1) Each facility shall develop a written policy regarding pets in accordance with local ordinances.~~

~~— (2) The administrator or designee shall determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease free, and vaccinated.~~

~~— (3) Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a health or safety risk.~~

R432-150-31. Volunteers.

~~— Volunteers may be used in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees.~~

R432-150-32. Laundry Services.

~~— (1) There shall be laundry service to provide clean linens in the facility.~~

~~— (2) If the facility contracts for laundry service, there shall be a signed, dated agreement that details all services provided.~~

~~— (3) The laundry service shall meet all requirements of this subsection.~~

— (4) If a facility contracts for laundry service, the contract shall state the procedure used in transporting, handling, and processing contaminated linen.

— (5) The administrator shall employ a qualified person to direct the facility's laundry service. The person shall have experience or training in or knowledge of the following:

- (a) Proper use of chemicals in the laundry;
- (b) Proper laundry procedures;
- (c) Proper use of laundry equipment;
- (d) Facility policy and procedures;
- (e) Federal, state and local rules and regulations.

— (6) The facility shall inform the resident and family of facility laundry policy for personal clothing.

— (7) Policies and Procedures:

— (a) Each facility shall develop and implement laundry policies and procedures:

— (b) They shall be reviewed and updated annually.

— (c) The policies and procedures shall address at least the following:

— (i) Written procedures for handling, storing, transporting and processing of linens shall be available to the staff.

— (ii) Linens, towels and resident clothing shall be washed with hot water unless the manufacturer recommends different temperatures.

— (iii) There shall be written procedures for proper handling of wet, soiled, and contaminated linen.

— (iv) All soiled linens shall be collected and transported to the laundry in closed, leak-proof laundry bags or covered impermeable containers. Separate linen carts labeled "SOILED LINEN" or "CLEAN LINEN" shall be constructed of washable material and shall be laundered or suitably cleaned to maintain sanitation.

— (v) Laundry personnel shall be trained in proper laundry procedures and infection control. Training shall be documented and available for review by the Department.

— (vi) Residents' personal laundry shall be marked for identification.

— (vii) There shall be enough clean linen for at least three complete changes of the facility's licensed bed capacity.

— (viii) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

— (ix) There shall be laundry equipment (e.g., washers, dryers, linen carts, transport carts) to maintain clean laundry for each resident.

— (x) Laundry equipment shall be maintained in proper working condition.

— (xi) A lavatory with hot and cold running water shall be provided close to the laundry area. Soap and sanitary towels shall also be provided.

— (8) Clean Linen:

— (a) Clean linen shall be stored, handled, and transported to prevent contamination:

— (b) Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.

— (c) Clean linen shall be covered if stored in alcoves and when transported through the facility.

— (d) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

— (e) Linens shall not be threadbare and shall be maintained in good repair:

— (f) A supply of clean washcloths, linens and towels shall be provided and available to staff to meet the needs of residents.

— (9) Soiled Linen:

— (a) Soiled linen shall be handled, stored, and processed in a manner to prevent the spread of infections:

— (b) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

— (c) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by residents, and precludes cross contamination of clean linens:

— (d) Laundry chutes shall be maintained in a clean sanitary state:

R432-150-33. Maintenance Services.

— (1) Direction:

— (a) There shall be adequate maintenance service to ensure that the facility, equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of residents, staff, and visitors.

— (b) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance:

— (c) If the facility contracts for maintenance services, there shall be a signed, dated agreement that details all services provided. The maintenance service shall meet all requirements of this subsection:

— (d) The facility shall develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility:

— (2) General Maintenance:

— (a) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually:

— (b) The policies and procedures shall address at least the following:

— (i) All buildings, fixtures, equipment and spaces shall be maintained in operable condition:

— (ii) Qualified personnel shall be employed to provide maintenance services. The administrator shall designate in writing all personnel assigned to maintenance duties:

— (iii) A pest control program shall be conducted to ensure the facility is free from vermin and rodents:

— (c) Draperies, carpets, and furniture shall be maintained so they are clean and in good repair:

— (d) Cracks in plaster, peeling wallpaper or paint, tears or splits in floor coverings, and missing tile shall be repaired promptly:

— (3) Electrical systems including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code:

— (4) Heating and cooling systems shall be inspected annually to guarantee safe operation. Documentation of these inspection reports shall be available for review by the Department.

— (5) Air Filters. There shall be regular inspections and cleaning or replacement of all filters installed in heating, air conditioning, and ventilation systems to maintain the systems in normal operating condition:

- (6) Emergency Lighting and Power System:
 - (a) Facilities which provide care for persons who require electrically operated life-support systems shall be equipped with an emergency power system which includes at least an automatic start-up emergency generator as described in R432-150.
 - (b) Facilities which provide care for residents who are not on electrically operated life-support systems and who cannot be relocated in an emergency shall make provision for emergency lighting and heat to meet the needs of residents.
 - (c) All facilities shall provide lighting for emergency exiting according to NFPA 101-12-2.9. Flashlights shall be available for emergency use by staff.
- (7) Testing Emergency Power Systems:
 - (a) All emergency power systems shall be maintained in operating condition and tested as follows:
 - (i) Emergency generators shall be tested every two weeks, and run under load for 20 minutes every month.
 - (ii) Transfer switches and battery operated equipment shall be tested every two weeks.
 - (b) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review by the Department.
- (8) Oxygen:
 - (a) Provision shall be made for safe handling and storage of oxygen.
 - (b) Facility personnel shall not transfer oxygen from one cylinder to another.
- (9) Maintenance Manual:
 - (a) A written manual on maintenance of heating, air conditioning, plumbing, and ventilation systems shall be adopted by each facility.
 - (b) A log shall document maintenance work performed.
 - (c) When maintenance is performed by an equipment-service company. The company shall certify that work has been performed in accordance with acceptable standards. This certification shall be retained by the facility for review by the Department.
- (10) Lighting:
 - (a) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots shall have fixtures for lighting.
 - (b) Resident rooms shall have general and night lighting. A reading light shall be provided for each resident.
 - (i) Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.
 - (ii) At least one night light fixture shall be controlled at the entrance to each resident room.
 - (iii) All controls for lighting in resident areas shall operate quietly.
 - (c) Lighting levels shown in the following table shall be used as minimum standards and do not preclude the use of higher levels that may be needed to insure the health and safety of the specific facility population served.

Physical Plant Area	Minimum Footcandles(a)
Corridors	
—Day	20
—Night	10
Exits	20
Stairways	20
Nursing Station	
—General	30
—Charting	75
—Med. Prep.	75
Pt./Res. Room	
—General	10
—Reading/Mattress Level	30
—Toilet	30
Lounge	
—General	10
—Reading	30
Recreation	30
Dining	30
Laundry	30

— (a) Based on lighting guidelines published in "Lighting for Health Care Facilities", Illuminating Engineering Society of North America, 1985 edition.

- (11) Mechanical Systems:
 - Heating, air conditioning, and ventilating systems shall be maintained to provide comfortable temperatures.
- (12) Water Supply:
 - (a) Backflow prevention devices shall be maintained in operating condition and tested.
 - (b) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall endeavor to maintain hot water delivered to resident care areas at temperatures between 105-115 degrees F.
- (13) Fire Alarm Systems:
 - The fire alarm system shall be maintained and tested in accordance with facility policy.

KEY: health facilities
May 1, 1997 **26-21-5**
Notice of Continuation December 15, 1997 **26-21-16]**
R432-150. Nursing Care Facility.

R432-150-1. Legal Authority.
 This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-2. Purpose.
 The purpose of R432-150 is to establish health and safety standards to provide for the physical and psycho-social well being of individuals receiving services in nursing care facilities.

R432-150-3. Construction Standard.
 Nursing Care Facilities shall be constructed and maintained in accordance with R432-5, Nursing Facility Construction.

R432-150-4. Definitions.

(1) The definitions found in R432-1-3 apply to this rule.

(2) The following definitions apply to nursing care facilities.

(a) "Skilled Nursing Care" means a level of care that provides 24 hour inpatient care to residents who need licensed nursing supervision. The complexity of the prescribed services must be performed by or under the close supervision of licensed health care personnel.

(b) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.

(c) "Medically-related Social Services" means assistance provided by the facility licensed social worker to maintain or improve each resident's ability to control everyday physical, mental and psycho-social needs.

(d) "Nurse's Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.

(f) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning for the convenience of staff, for punishment or discipline, or as a substitute for direct resident care.

(g) "Physical Restraint" means any physical method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily which restricts the resident's freedom of movement or normal access to his own body.

(h) "Significant Change" means a major change in a resident's status that impacts on more than one area of the resident's health status.

(i) "Therapeutic Leave" means leave pertaining to medical treatment planned and implemented to attain an objective that is specified in the individual plan of care.

(j) "Licensed Practitioner" means a health care practitioner whose license allows assessment, treatment, or prescribing practices within the scope of the license and established protocols.

(k) "Governing Body" means the board of trustees, owner, person or persons designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct and functioning of the health care facility or agency.

(l) "Nursing Staff" means nurses aides that are in the process of becoming certified, certified nurses aides, and those individuals that are licensed (e.g. licensed practical nurses and registered nurses) to provide nursing care in the State of Utah.

(m) "Licensed Practical Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(11).

(n) "Registered Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31, Section 2(12).

(o) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

R432-150-5. Scope of Services.

(1) An intermediate level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

(b) The facility shall provide at least one registered nurse either by direct employ or by contract to provide direction to nursing services.

(c) The facility may employ a licensed practical nurse to act as the health services supervisor in lieu of a director of nursing provided that a registered nurse consultant meets regularly with the health services supervisor.

(d) The facility shall provide at least the following:

(i) medical supervision;

(ii) dietary services;

(iii) social services; and

(iv) recreational therapy.

(e) The following services shall be provided as required in the resident care plan:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech therapy;

(iv) respiratory therapy; and

(v) other therapies.

(2) A skilled level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

A licensed nurse shall serve as charge nurse on each shift.

(b) The facility shall employ a registered nurse for at least eight consecutive hours a day, seven days a week.

(c) The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis. A person may not concurrently serve as the director of nursing and as a charge nurse.

(d) A skilled level of care facility shall provide services to residents that preserve current capabilities and prevent further deterioration including the following:

(i) medical supervision;

(ii) dietary services;

(iii) physical therapy;

(iv) social services;

(v) recreation therapy;

(vi) dental services; and

(vii) pharmacy services;

(e) The facility shall provide the following services as required by the resident care plan:

(i) respiratory therapy,

(ii) occupational therapy, and

(iii) speech therapy.

(3) Respite services may be provided in nursing care facilities.

(a) The purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. A respite stay which exceeds 14 days is a nursing facility admission subject to the requirements of this rule applicable to non-respite residents.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, the case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) a Level 1 Preadmission Screening upon the persons admission for respite services; and

(ii) a service agreement to serve as the plan of care, which shall identify the prescribed medications, physician treatment orders, need for assistance with activities of daily living, and diet orders.

(f) The facility must have written respite care policies and procedures that are available to staff. Respite care policies and procedures must address:

(i) medication administration;

(ii) notification of a responsible party in the case of an emergency;

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

(vii) training and in-service requirement for employees; and

(viii) handling personal funds.

(g) Persons receiving respite services must receive a copy of the Resident Rights documents upon admission.

(h) The facility must maintain a record for each person receiving respite services. The record shall contain the following:

(i) the service agreement;

(ii) resident demographic information;

(iii) nursing notes;

(iv) physician treatment orders;

(v) daily staff notes;

(vi) accident and injury reports,

(vii) a post service summary, and

(viii) an advanced directive, if available.

(i) Retention and storage of respite records shall comply with R432-150-25(3).

(j) Confidentiality and release of information shall comply with R432-150-25(4).

(4) Hospice care may only be arranged and provided by a licensed hospice agency in accordance with R432-750. The facility shall be licensed as a hospice if it provides hospice care.

(5) A nursing care facility may provide terminal care.

R432-150-6. Reserved.

Reserved.

R432-150-7. Governing Body.

The facility must have a governing body, or designated persons functioning as a governing body.

(1) The governing body must establish and implement policies regarding the management and operation of the facility.

(2) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of resident rights.

(3) The governing body must appoint the administrator in writing.

R432-150-8. Administrator.

(1) The administrator must comply with the following requirements.

(a) The administrator must be licensed as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15.

(b) The administrator's license shall be posted in a place readily visible to the public.

(c) The administrator may supervise no more than one nursing care facility.

(d) The administrator shall have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(2) The administrator's responsibilities must be defined in a written job description on file in the facility. The job description shall include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility;

(c) respond to recommendations made by the quality assurance committee;

(d) implement policies and procedures governing the operation of all functions of the facility; and

(e) review all incident and accident reports and document the action taken or reason for no action.

(3) The administrator shall ensure that facility policies and procedures reflect current facility practice, and are revised and updated as needed.

(4) The administrator shall secure and update contracts for required professional services not provided directly by the facility.

(a) Contracts shall document the following:

(i) the effective and expiration date of contract;

(ii) a description of goods or services provided by the contractor to the facility;

(iii) a statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) a provision to terminate the contract with advance notice;

(v) the financial terms of the contract;

(vi) a copy of the business or professional license of the contractor; and

(vii) a provision to report findings, observations, and recommendations to the administrator on a regular basis.

(b) Contracts shall be signed, dated and maintained for review by the Department.

(5) The administrator shall maintain a written transfer agreement with one or more hospitals to facilitate the transfer of residents and essential resident information. The transfer agreement must include:

- (a) criteria for transfer;
- (b) method of transfer;
- (c) transfer of information needed for proper care and treatment of the resident transferred;
- (d) security and accountability of personal property of the resident transferred;
- (e) proper notification of hospital and responsible person before transfer;
- (f) the facility responsible for resident care during the transfer; and
- (g) resident confidentiality.

R432-150-9. Medical Director.

- (1) The administrator must retain by formal agreement a licensed physician to serve as medical director or advisory physician according to resident and facility needs.
- (2) The medical director or advisory physician shall:
 - (a) be responsible for the development of resident care policies and procedures including the delineation of responsibilities of attending physicians;
 - (b) review current resident care policies and procedures with the administrator;
 - (c) serve as a liaison between resident physicians and the administrator;
 - (d) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees and;
 - (e) act as consultant to the director of nursing or the health services supervisor in matters relating to resident care policies.

R432-150-10. Staff and Personnel.

- (1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.
 - (a) The administrator, director of nursing or health services supervisor, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.
 - (b) All personnel must have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.
 - (c) All personnel must be licensed, certified or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.
 - (2) The facility shall maintain staffing records, including employee performance evaluations, for the preceding 12 months.
 - (3) The facility shall establish a personnel health program through written personnel health policies and procedures.
 - (4) The facility shall complete a health evaluation and inventory for each employee upon hire.
 - (a) The health inventory shall obtain at least the employee's history of the following:
 - (i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and
 - (ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(b) The health inventory shall include health screening and immunization components of the employee's personnel health program.

(c) Infection control shall include staff immunization as necessary to prevent the spread of disease.

(d) Employee skin testing and follow up for tuberculosis shall be done in accordance with R388-804. Tuberculosis Control Rule.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(5) The facility shall plan and document in-service training for all personnel.

(a) The following topics shall be addressed at least annually:

(i) fire prevention;
(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for all employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) training in Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(vii) proper use and documentation of restraints;

(viii) resident rights;

(ix) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(x) confidentiality of resident information.

(6) Any person who provides nursing care, including nurse aides and orderlies, must work under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program.

(b) The facility shall verify through the nurse aide registry prior to employment that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation. If such a verified report exists, the facility may not hire the applicant.

(c) If an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(7) The facility may utilize volunteers in the daily activities of the facility provided that volunteers are not included in the facility's staffing plan in lieu of facility employees.

(a) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(b) Volunteers who provide personal care to residents shall be screened according to facility policy and under the direct supervision of a qualified employee.

(8) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for making the report.

R432-150-11. Quality Assurance.

(1) The administrator must implement a well-defined quality assurance plan designed to improve resident care. The plan must:

(a) include a system for the collection of data indicators;

(b) include an incident reporting system to identify problems, concerns, and opportunities for improvement of resident care;

(c) implement a system to assess identified problems, concerns and opportunities for improvement; and

(d) implement actions that are designed to eliminate identified problems and improve resident care.

(2) The plan must include a quality assurance committee that functions as follows:

(a) documents committee meeting minutes including all corrective actions and results;

(b) conducts quarterly meetings and reports findings, concerns and actions to the administrator and governing body; and

(c) coordinates input of data indicators from all provided services and other departments as determined by the resident plan of care and facility scope of services.

(3) Incident and accident reports shall:

(a) be available for Department review;

(b) be numbered and logged in a manner to account for all filed reports; and

(c) have space for written comments by the administrator or medical director.

(4) Infection reporting must be integrated into the quality assurance plan and must be reported to the Department in accordance with R386-702, Communicable Disease Rule.

R432-150-12. Resident Rights.

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for

the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds \$100, the facility must deposit all money in excess of \$100 in an interest-bearing account.

(f) Upon annual license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be

surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department. (7) Facility smoking policies must comply with the Utah Indoor Clean Air Act, R392-510, 1995 and the rules adopted there under and Section 31-4.4 of the 1994 Life Safety Code.

R432-150-13. Resident Assessment.

(1) The facility shall upon admission obtain physician orders for the resident's immediate care.

(2) The facility must complete a comprehensive assessment of each resident's needs including a description of the resident's capability to perform daily life functions and significant impairments in functional capacity.

(a) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psycho social status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status; and

(xiii) drug therapy.

(b) The facility must complete the initial assessment within 14 calendar days of admission and any revisions to the initial assessment within 21 calendar days of admission.

(c) A significant change in a resident's physical or mental condition requires an interdisciplinary team review and may require the facility to complete a new assessment within 14 calendar days of the condition change.

(d) At a minimum, the facility must complete three quarterly reviews and one full assessment in each 12 month period.

(e) The facility shall use the results of the assessment to develop, review, and revise the resident's comprehensive care plan.

(3) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(4) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psycho-social needs as identified in the comprehensive assessment.

(a) The comprehensive care plan shall be:

(i) developed within seven days after completion of the comprehensive assessment;

(ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having

responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or guardian, to the extent practicable; and

(iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(b) The services provided or arranged by the facility shall meet professional standards of quality and be provided by qualified persons in accordance with the resident's written care plan.

(5) The facility must prepare at the time of discharge a final summary of the resident's status to include items in R432-150-13(2)(a). The final summary shall be available for release to authorized persons and agencies, with the consent of the resident or representative.

(a) The final summary must include a post-discharge care plan developed with the participation of the resident and resident's family or guardian.

(b) If the discharge of the resident is based on the inability of the facility to meet the resident's needs, the final summary must contain a detailed explanation of why the resident's needs could not be met.

R432-150-14. Restraint Policy.

(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.

(2) The facility must have written policies and procedures regarding the proper use of restraints.

(a) Physical and chemical restraints may only be used to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(b) Physical and chemical restraints must not be used as substitutes for direct resident care, activities, or other services.

(c) Restraints must not unduly hinder evacuation of the resident in the event of fire or other emergency.

(d) If use of a physical or a chemical restraint is implemented, the facility must inform the resident, next of kin, and the legally designated representative of the reasons for the restraint, the circumstances under which the restraint shall be discontinued, and the hazards of the restraint, including potential physical side effects.

(3) The facility must develop and implement policies and procedures that govern the use of physical and chemical restraints. These policies shall promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use.

(4) Physical and chemical restraint policies must incorporate and address at least the following:

(a) resident assessment criteria which includes:

(i) appropriateness of use;

(ii) procedures for use;

(iii) purpose and nature of the restraint;

(iv) less restrictive alternatives prior to the use of more restrictive measures; and

(v) behavior management and modification protocols including possible alterations to the physical environment;

(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used; and

(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Emergency use of physical and chemical restraints must comply with the following:

(a) A physician, a licensed health practitioner, the director of nursing, or the health services supervisor must authorize the emergency use of restraints.

(b) The facility must notify the attending physician as soon as possible, but at least within 24 hours of the application of the restraints.

(c) The facility must notify the director of nursing or health services supervisor no later than the beginning of the next day shift of the application of the restraints.

(d) The facility must document in the resident's record the circumstances necessitating emergency use of the restraint and the resident's response.

(6) Physical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care.

(a) The interdisciplinary team must review and document the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner.

(b) The resident care plan must indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.

(c) Staff application of physical restraints must ensure minimal discomfort to the resident and allow sufficient body movement for proper circulation.

(d) Staff application of physical restraints must not cause injury or allow a potential for injury.

(e) Leather restraints, straight jackets, or locked restraints are prohibited.

(7) Chemical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program.

(a) The interdisciplinary team must review and document the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner.

(b) The facility must monitor each resident receiving chemical restraints for adverse effects that significantly hinder verbal, emotional, or physical abilities.

(c) Any medication given to a resident must be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(d) The facility must initiate drug holidays in accordance with R432-150-15(13)(b).

(8) Facility policy must include criteria for admission and retention of residents who require behavior management programs.

R432-150-15. Quality of Care.

(1) The facility must provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psycho-social well-being, in accordance with the comprehensive assessment and care plan.

(a) Necessary care and services include the resident's ability to:

- (i) bathe, dress, and groom;
- (ii) transfer and ambulate;
- (iii) use the toilet;
- (iv) eat; and
- (v) use speech, language, or other functional communication systems.

(b) Based on the resident's comprehensive assessment, the facility must ensure that:

(i) each resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) each resident is given the treatment and services to maintain or improve his abilities; and

(iii) a resident who is unable to carry out these functions receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) The facility must assist residents in scheduling appointments and arranging transportation for vision and hearing care as needed.

(3) The facility's comprehensive assessment of a resident must include an assessment of pressure sores. The facility must ensure that:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) The facility's comprehensive assessment of the resident must include an assessment of incontinence. The facility must ensure that:

(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections; and

(d) a licensed nurse must complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) The facility must assess each resident to ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) The facility must ensure that the psycho-social function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psycho-social function was unavoidable. The facility shall ensure that:

(a) a resident who displays psycho-social adjustment difficulty receives treatment and services to achieve as much re-motivation and reorientation as possible; and

(b) a resident whose assessment does not reveal a psycho-social adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) The facility must assess alternative feeding methods to ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) The facility must maintain the resident environment to be as free of accident hazards as is possible.

(9) The facility must provide each resident with adequate supervision and assistive devices to prevent accidents.

(10) Each resident's comprehensive assessment must include an assessment on nutritional status. The facility must ensure that each resident:

(a) maintains acceptable nutritional status parameters, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) receives a therapeutic diet when there is a nutritional problem.

(11) The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) The facility must ensure that residents receive proper treatment and care for the following special services:

(a) injections;

(b) parenteral and enteral fluids;

(c) colostomy, ureterostomy, or ileostomy care;

(d) tracheostomy care;

(e) tracheal suctioning;

(f) respiratory care;

(g) foot care; and

(h) prostheses care.

(13) Each resident's drug regimen must be free from unnecessary drugs and the facility shall ensure that:

(a) residents who have not used anti-psychotic drugs are not given these drugs unless anti-psychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(b) residents who use anti-psychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.

(14) The quality assurance committee must monitor medication errors to ensure that:

(a) the facility does not have medication error rates of five percent or greater;

(b) residents are free of any significant medication errors.

R432-150-16. Physician Services.

(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.

(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.

(3) The physician must:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign all orders.

(4) Physician visits must conform to the following:

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.

(b) Each resident must be seen by the physician within five days of admission to a facility when admission is initiated by a nurse practitioner or physician assistant working under the direction of the physician.

(c) Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.

(d) Physician visits must be completed within ten days of the date the visit is required.

(e) Except as required by R432-150-16(4)(f), all required physician visits must be made by the physician.

(f) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

R432-150-17. Social Services.

Each nursing care facility must provide or arrange for medical social services sufficient to meet the needs of the residents. Social services must be under the direction of a therapist licensed in accordance with Title 58 Chapter 60 of the Mental Health Practice Act.

R432-150-18. Laboratory Services.

(1) The facility must provide laboratory services in accordance with the size and needs of the facility.

(2) Laboratory services must comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-150-19. Pharmacy Services.

(1) The facility must provide or obtain by contract routine and emergency drugs, biologicals, and pharmaceutical services to meet resident needs.

(2) The facility must employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on all aspects of pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.

(3) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(a) The pharmacist must report any irregularities to the attending physician and the director of nursing or health services supervisor.

(b) The physician and the director of Nursing or health services supervisor must indicate acceptance or rejection of the report and document any action taken.

(4) Pharmacy personnel must ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) The facility must store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-19 (6)(e), and permit only authorized personnel to have access to the keys.

(a) The facility must provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

(b) Non-medication materials that are poisonous or caustic may not be stored with medications.

(c) Containers must be clearly labeled.

(d) Medication intended for internal use shall be stored separately from medication intended for external use.

(e) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.

(f) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(6) The facility must maintain an emergency drug supply.

(a) Emergency drug containers shall be sealed to prevent unauthorized use.

(b) Contents of the emergency drug supply must be listed on the outside of the container and the use of contents shall be documented by the nursing staff.

(c) The emergency drug supply shall be stored and located for access by the nursing staff.

(d) The pharmacist must inventory the emergency drug supply monthly.

(e) Used or outdated items shall be replaced within 72 hours by the pharmacist.

(7) The pharmacy must dispense and the facility must ensure that necessary drugs and biologicals are provided on a timely basis.

(8) The facility must limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) Drug references must be available for all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) Drugs may be sent with the resident upon discharge if so ordered by the discharging physician provided that:

(a) such drugs are released in compliance R156-17-24; and

(b) a record of the drugs sent with the resident is documented in the resident's health record.

(11) Disposal of controlled substances must be in accordance with the Pharmacy Practice Act.

R432-150-20. Recreation Therapy.

(1) The facility shall provide for an ongoing program of individual and group activities and therapeutic interventions designed to meet the interests, and attain or maintain the highest practicable physical, mental, and psycho-social well-being of each resident in accordance with the comprehensive assessment.

(a) Recreation therapy shall be provided in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

(b) The recreation therapy staff must:

(i) develop monthly activity calendars for residents activities; and

(ii) post the calendar in a prominent location to be available to residents, staff, and visitors.

(2) Each facility must provide sufficient space and a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

(3) Storage must be provided for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-150-21. Pet Policy.

(1) Each facility must develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee must determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free, and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets are not permitted in any area where their presence would create a health or safety risk.

R432-150-22. Admission, Transfer, and Discharge.

(1) Each facility must develop written admission, transfer and discharge policies and make these policies available to the public upon request. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility is endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(f) The facility ceases to operate.

(2) The facility must document resident transfers or discharges under any of the circumstances specified in R432-150-22(1)(a) through (f), in the resident's medical record. The transfer or discharge documentation must be made by:

(a) the resident's physician if transfer or discharge is necessary under R432-150-22(1)(a) and (b);

(b) a physician if transfer or discharge is necessary under R432-150-22(1)(c) and (d).

(3) Prior to the transfer or discharge of a resident, the facility must:

(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in R432-150-22(5).

(4) Except when specified in R432-150-22(4)(a), the notice of transfer or discharge required under R432-150-22(2), must be made by the facility at least 30 days before the resident is transferred or discharged.

(5) Notice may be made as soon as practicable before transfer or discharge if:

(a) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;

(b) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(c) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) a resident has not resided in the facility for 30 days.

(6) The contents of the written transfer or discharge notice must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged; and

(d) the name, address, and telephone number of the State and local Long Term Care Ombudsman programs.

(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) The facility must provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.

(8) Notice of resident bed-hold policy, transfer and re-admission must be documented in the resident file.

(a) Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written notification and information to the resident and a family member or legal representative that specifies:

(i) the facility's policies regarding bed-hold periods permitting a resident to return; and

(ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.

(b) At the time of transfer of a resident to a hospital or for therapeutic leave, the facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.

(c) If transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(d) The facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(9) The facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of pay source.

(10) The facility must have in effect a written transfer agreement with one or more hospitals to ensure that:

(a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and

(c) security and accountability of personal property of the individual transferred is maintained.

R432-150-23. Ancillary Health Services.

(1) If the nursing care facility provides its own radiology services, these facility must comply with R432-100-21, Radiology Services, in the General Acute Hospital Rule.

(2) A facility that provides specialized rehabilitative services may offer these services either directly or through agreements with outside agencies or qualified therapists. If provided, these services must meet the needs of the residents.

(a) The facility must provide space and equipment for specialized rehabilitative services in accordance with the needs of the residents.

(b) Specialized rehabilitative services may only be provided by therapists licensed in accordance with Utah law.

(c) All therapy assistants must work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists must have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(e) Specialized rehabilitative services may be provided only if ordered by the attending physician.

(i) The plan of treatment must be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(ii) An initial progress report must be submitted to the attending physician two weeks after treatment is begun or as specified by the physician.

(iii) The physician and therapist must review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) The facility must document the delivery of rehabilitative services in the resident record.

(3) The facility must provide or arrange for regular and emergency dental care for residents.

(a) Dental care provisions shall include:

(b) development of oral hygiene policies and procedures with input from dentists;

(c) presentation of oral hygiene in-service programs by knowledgeable persons;

(d) development of referral service for those residents who do not have a personal dentist; and

(e) arrangement for transportation to and from the dentist's office.

R432-150-24. Food Services.

(1) The facility must provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) There must be adequate staff employed by the facility to meet the dietary needs of the residents.

(a) The facility must employ a dietitian either full-time, part-time, or on a consultant basis.

(b) The dietitian must be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a dietitian is not employed full-time, the administrator must designate a full-time person to serve as the dietetic supervisor.

(d) If the dietetic supervisor is not a certified dietitian, the facility must document that the consulting dietitian reviews each resident's dietary plan of care on at least a monthly basis.

(e) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(3) The facility must develop menus that meet the nutritional needs of residents to the extent medically possible.

(a) Menus shall be:

(i) prepared in advance;

(ii) followed;

(iii) different each day;

(iv) posted for each day of the week;

(v) approved and signed by a certified dietician and;

(vi) cycled no less than every three weeks.

(b) The facility must retain documentation for at least three months of all served substitutions to the menu.

(4) The facility must make available for Department review all food sanitation inspection reports of State or local health department inspections.

(5) The attending physician must prescribe in writing all therapeutic diets.

(6) There must be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(7) The facility must provide special eating equipment and assistive devices for residents who need them.

(8) The facility's food service must comply with the Utah Department of Health Food Service Sanitation Regulations R392-100.

(9) The facility must maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu for three meals per day, per resident.

R432-150-25. Medical Records.

(1) The facility must implement a medical records system to ensure complete and accurate retrieval and compilation of information.

(2) The administrator must designate an employee to be responsible and accountable for the processing of medical records.

(a) The medical records department must be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If an RRA or ART is not employed at least part time, the facility must consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

(3) The resident medical record and its contents must be retained, stored and safeguarded from loss, defacement, tampering, and damage from fires and floods.

(a) Medical records must be protected against access by unauthorized individuals.

(b) Medical records must be retained for at least seven years. Medical records of minors must be kept until the age of eighteen plus four years, but in no case less than seven years.

(4) The facility must maintain an individual medical record for each resident. The medical record must contain written documentation of the following:

(a) records made by staff regarding daily care of the resident;

(b) informative progress notes by staff to record changes in the resident's condition and response to care and treatment in accordance with the care plan;

(c) a pre-admission screening;

(d) an admission record with demographic information and resident identification data;

(e) a history and physical examination up-to-date at the time of the resident's admission;

(f) written and signed informed consent;

(g) orders by clinical staff members;

(h) a record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(i) nursing notes;

(j) monthly nursing summaries;

(k) quarterly resident assessments;

(l) a record of medications and treatments administered;

(m) laboratory and radiology reports;

(n) a discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate;

(o) a service agreement if respite services are provided;

(p) physician treatment orders; and

(q) information pertaining to incidents, accidents and injuries.
(r) If a resident has an advanced directive, the resident's record must contain a copy of the advanced directive.

(5) All entries into the medical record must be authenticated including date, name or identifier initials, and title of the person making the entries

(6) Resident respite records must be maintained within the facility.

R432-150-26. Housekeeping Services.

(1) The facility must provide a safe, clean, comfortable environment, allowing the resident to use personal belongings to create a homelike environment.

(a) Cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials must be stored in a locked area to prevent unauthorized access.

(b) The facility must provide adequate housekeeping services and sufficient personnel to maintain a clean and sanitary environment.

(i) Personnel engaged in housekeeping or laundry services cannot be engaged concurrently in food service or resident care.

(ii) If housekeeping personnel also work in food services or direct patient care services, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary environment.

R432-150-27. Laundry Services.

(1) The administrator must designate a person to direct the facility's laundry service. The designee must have experience, training, or knowledge of the following:

(a) proper use of chemicals in the laundry;

(b) proper laundry procedures;

(c) proper use of laundry equipment;

(d) facility policies and procedures; and

(e) federal, state and local rules and regulations.

(2) The facility must provide clean linens, towels and wash cloths for resident use.

(3) If the facility contracts for laundry services, there must be a signed, dated agreement that details all services provided.

(4) The facility must inform the resident and family of facility laundry policy for personal clothing.

(5) The facility must ensure that each resident's personal laundry is marked for identification.

(6) There must be enough clean linen, towels and washcloths for at least three complete changes of the facility's licensed bed capacity.

(7) There must be a bed spread for each resident bed.

(8) Clean linen must be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(9) Soiled linen must be handled, stored, and processed in a manner to prevent contamination and the spread of infections.

(10) Soiled linen must be sorted in a separate room by methods affording protection from contamination.

(11) The laundry area must be separate from any room where food is stored, prepared, or served.

R432-150-28. Maintenance Services.

(1) The facility must ensure that buildings, equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of residents, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there must be a signed, dated agreement that details all services provided. The maintenance service must meet all requirements of this section.

(c) The facility must develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility.

(2) The facility must ensure that the premises is free from vermin and rodents.

(3) Entrances, exits, steps, ramps, and outside walkways must be maintained in a safe condition with regard to snow, ice and other hazards.

(4) Facilities which provide care for residents who cannot be relocated in an emergency must make provision for emergency lighting and heat to meet the needs of residents.

(5) Functional flashlights shall be available for emergency use by staff.

(6) All facility equipment must be tested, calibrated and maintained in accordance with manufacturer specifications.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Documentation of testing or calibration conducted by an outside agency must be available for Department review.

(7) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(8) Heating, air conditioning, and ventilating systems must be maintained to provide comfortable temperatures.

(9) Back-flow prevention devices must be maintained in operating condition and tested according to manufacturer specifications.

(10) Hot water temperature controls must automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. Hot water must be delivered to public and resident care areas at temperatures between 105-115 degrees F.

(11) Disposable and single use items must be properly disposed of after use.

(12) Nursing equipment and supplies must be available as determined by facility policy in accordance with the needs of the residents.

(13) The facility must have at least one first aid kit and a first aid manual available at a specified location in the facility. The first aid manual must be a current edition of a basic first aid manual approved by the American Red Cross or the American Medical Association.

(14) The facility must have at least one OSHA-approved spill or clean-up kit for blood-borne pathogens.

(15) Vehicles used to transport residents must be:

(a) licensed with a current vehicle registration and safety inspection;

(b) equipped with individual, size-appropriate safety restraints such as seat belts which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, and are installed and used in accordance with manufacturer specifications;

(c) equipped with a first aid kit as specified in R432-150-28(13); and

(d) equipped with a spill or clean-up kit as specified in R432-150-28(14).

R432-150-29. Emergency Response and Preparedness Plan.

(1) The facility must ensure the safety and well-being of residents and make provisions for a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The facility must develop an emergency and disaster plan that is approved by the governing board.

(a) The facility's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) individuals who shall be notified in an emergency in order of priority; and

(vi) methods of transporting and evacuating residents and staff to other locations.

(b) The facility must have available at each nursing station emergency telephone numbers including responsible staff persons in the order of priority.

(c) The facility must document resident emergencies and responses, emergency events and responses, and the location of residents and staff evacuated from the facility during an emergency.

(d) The facility must conduct and document simulated disaster drills semi-annually.

(3) The administrator must develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan must delineate evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department.

(b) The facility must post the evacuation plan in prominent locations in exit access ways throughout the building.

(c) The written fire or emergency plan must include fire containment procedures and how to use the facility alarm systems and signals.

(d) Fire drills and fire drill documentation must be in accordance with the State of Utah Fire Prevention Board, R710-4.

R432-150-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and R432-3-6 or be assessed a penalty not to exceed the sum of \$5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: health facilities**1999****Notice of Continuation December 15, 1997****26-21-5****26-21-16**

Insurance, Administration

R590-96Rule to Recognize New Annuity
Mortality Tables for Use in Determining
Reserve Liabilities for Annuities**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 21766

FILED: 12/29/1998, 17:29

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to recognize new individual annuity mortality and group annuity mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts.

SUMMARY OF THE RULE OR CHANGE: Add two new mortality tables.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-17-505

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This may cause an increase in the number of form filings for which there is a fee. However insurers may include other contract changes which would have required a fee. This only affects companies actively marketing insurance of which there are approximately 100.

❖LOCAL GOVERNMENTS: No cost or savings since they do not regulate insurance companies.

❖OTHER PERSONS: The impact varies with the insurance companies' distribution of annuity policies. The new tables recognize that people are living longer, therefore the new tables require sufficient reserves to cover the extended life expectancy. When a majority of the states adopts these tables, then the Internal Revenue Service will offer a tax break to the insurers that utilize these new tables.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The impact varies with the insurance companies distribution of annuity policies. The new tables recognize that people are living longer therefore, the new tables require sufficient reserves to cover the extended life expectancy. When a majority of the states adopts these tables, then the Internal Revenue Service will offer a tax break to the insurers that utilize these new tables.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should ensure the

solvency of the insurance companies by requiring adequate reserves based upon the tables which were developed by the Society of Actuaries.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities.****R590-96-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to Sections 31A-2-201, and 31A-17-505.

R590-96-2. Purpose.

The purpose of this rule is to recognize ~~the following~~ the following mortality tables~~[, 1983 Table "a" and 1983 GAM Table,]~~ for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a", the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

R590-96-3. Definitions.

A. As used in this rule 1983 Table "a" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

B. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.

C. ~~[The tables defined herein are available from the Insurance Department.]~~ As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume XLVII of the Transactions of the Society of Actuaries, 1995, and adopted as a recognized mortality table for annuities in

December 1996 by the National Association of Insurance Commissioners.

D. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the Transactions of the Society of Actuaries (1995) and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners.

E. The tables identified in R590-96-3.C. and D., are hereby incorporated in this rule and are available from the Insurance Department.

R590-96-4. Individual Annuity or Pure Endowment Contracts.

A. [The]Except as provided in Subsections B. and C. of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 2, 1980.

B. [The 1983 Table "a" is to]Except as provided in Subsection C. of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1999.

D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after July 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

- (1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- (2) Settlements involving similar actions such as worker's compensation claims; or
- (3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

R590-96-5. Group Annuity or Pure Endowment Contracts.

A. [The 1983 GAM Table and]Except as provided in Subsections B. and C. of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, [either table]any one of these tables may be used for purposes of valuation for [any]an annuity or pure endowment purchased on or after April 2, 1980 under a group annuity or pure endowment contract.

B. [The 1983 GAM Table is to]Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment

purchased on or after July 1, [~~1985~~]1999 under a group annuity or pure endowment contract.

R590-96-6. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows: $q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$; where the q_x^{1994} and AA_x s are as specified in the 1994 GAR Table.

R590-96-[6]7. Separability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances may not be affected by it.

KEY: insurance law

[1993]1999

Notice of Continuation October 24, 1997

31A-2-201

31A-17-[403]505



Insurance, Administration
R590-190
 Unfair Property, Liability and Title
 Claims Settlement Practices Rule

NOTICE OF PROPOSED RULE

(New)

DAR FILE NO.: 21767

FILED: 12/30/1998, 09:08

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule contains a portion of language from R590-89, which will be repealed. Rule R590-89 includes claims handling standards for all lines of insurance. These standards will be divided into three different rules: one rule for property, liability and title insurance claims; another rule for life insurance claims; and another rule for health insurance claims. This new format follows the National Association of Insurance Commissioners Model Regulations.

SUMMARY OF THE RULE OR CHANGE: This rule will only cover claims handling standards for automobile, fire, extended coverage and title claims. Health and life claims will now be handled in two separate rules. The procedures for handling claims for these lines of insurance will remain the same as those that are in R590-89, which will be repealed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-308, 31A-21-312, and 31A-26-303

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be no change to the state budget since the claims handling standards will remain the same. No new fees will be required or old fees eliminated.

❖LOCAL GOVERNMENTS: This rule does not affect local government. Licensing fees and fines all go to the state.
 ❖OTHER PERSONS: Since the standards for handling claims is the same as in the old rule, R590-89, there should be no additional cost to insurers, agents, or their insureds.
 COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the standards for handling claims is the same as in the old rule, R590-89, there should be no additional cost to insurers, agents, or their insureds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The current Unfair Claims Practices rule is being rewritten into three different rules. Each will focus on a particular line of insurance: health; life; and property and casualty insurance. The standard claim settlement practices of insurers should not change as a result of the rewriting of this rule. Therefore, no additional costs or cost savings are anticipated.

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

Insurance
 Administration
 3110 State Office Building
 Salt Lake City, UT 84114, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/17/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 02/10/1999, 10:00 a.m., 1112 State Office Building (behind the State Capitol), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/18/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-190. Unfair Property, Liability and Title Claims Settlement Practices Rule.

R590-190-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided in Section 31A-2-204.

R590-190-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of property, liability, and title claims arising under contracts or certificates issued to residents of the State of Utah. It is not intended to cover bail bonds. These standards include fair and rapid settlement of claims, protection for claimants under insurance policies from unfair claims adjustment practices and promotion of professional competence of those engaged in claim adjusting. This rule defines procedures and practices which constitute unfair claim practices. This rule is regulatory in nature and is not intended to create any private right of action.

R590-190-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in 31A-1-301, and the following:

(1) "claim file" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement;

(2) "claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;

(3) "claim representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(4) "days" means calendar days;

(5) "documentation" includes, but is not limited to, any pertinent communications, transactions, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim;

(6) "first party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to a benefit or a payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;

(7) "general business practice" means a pattern of conduct;

(8) "investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract;

(9) "notice of claim or loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprizes the insurer of the facts pertinent to a claim;

(10) "proof of loss" shall mean reasonable documentation by the insured as to the facts of the loss and the amount of the claim in accordance with policy provisions and insurer practices;

(11) "specific disclosure" shall mean notice to the insured by means of policy provisions in boldface type or a separate written notice mailed or delivered to the insured;

(12) "third party claimant" means any person asserting a claim against any person under a policy or certificate of an insurer.

R590-190-4 File and Record Documentation.

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the

commissioner's duly appointed designees. To aid in such examination:

(1) the insurer shall maintain claim data that is accessible and retrievable for examination; and

(2) detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to the claim.

R590-190-5. Misrepresentation of Policy Provisions.

(1) Insurer shall fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented, including loss of use and household services.

(2) Insurer's representative shall disclose first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(3) Insurer are prohibited from denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

R590-190-6. Failure to Acknowledge Pertinent Communications.

Within 15-days every insurer shall:

(1) upon receiving notification of a claim, acknowledge the receipt of such notice unless payment is made within such period of time, or unless the insurer has a reason acceptable to the Insurance Department as to why such acknowledgment cannot be made within the time specified. Notice given to an agent of an insurer is notice to the insurer;

(2) upon receipt of an inquiry from the Insurance Department respecting a claim shall furnish the department with a substantive response to the inquiry;

(3) provide a substantive response to a claimant when it appears a response is expected; and

(4) upon receiving notification of a claim, provide all necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements.

R590-190-7. Notice of Claim or Loss.

(1) Notice of Claim or Loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of Claim or Loss may be given by an insured to any appointed agent, authorized adjuster, or other authorized claim representative of an insurer unless the insurer clearly directs otherwise by means of Specific Disclosure as defined herein.

(3) The general practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

R590-190-8. Proof of Loss.

Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule and the requirements of Section 31A-21-312.

R590-190-9. Unfair Methods, Deceptive Acts and Practices Defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts and practices in the business of insurance, and the commission of which are violations of this rule:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims;

(4) failing to deliver a copy of standards for prompt investigation of claims to the Insurance Department when requested to do so;

(5) refusing to pay claims without conducting a reasonable investigation;

(6) offering first party claimants substantially less than the reasonable value of the claim. Such value may be established by one or more independent sources;

(7) making claim payments to insureds or beneficiaries not accompanied by a statement or explanation of benefits setting forth the coverage under which the payments are being made and how the payment amount was calculated;

(8) failing to pay claims within 30-days of properly executed proof of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) refusing payment of a claim solely on the basis of an insured's request to do so unless:

(a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim; or

(b) the insured is granted the right under the policy of insurance to consent to settlement of claims.

(10) advising a claimant not to obtain the services of an attorney or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(11) misleading a claimant as to the applicable statute of limitations;

(12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to the claims payment;

(13) deducting from a loss or claim payment made under one policy those premiums owed by the insured on another policy, unless the insured consents;

(14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(15) issuing checks or drafts in partial settlement of a loss or a claim under a specified coverage when such check or draft

contains language which purports to release the insurer or its insured from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of the insured;

(17) denying a claim for medical treatment after preauthorization has been given, except in cases where the insurer obtains and provides to the claimant documentation of the pre-existence of the condition for which the preauthorization has been given or if the claimant is not eligible for coverage;

(18) refusing to pay reasonably incurred expenses to an insured when such expenses resulted from a delay, as prohibited by these rules, in claims settlement or claims payment;

(19) when an automobile insurer represents both a tort feisor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tort feisor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tort feisor's liability coverage before exhausting a claimant's personal injury protection coverage.

(20) failing to pay interest at the legal rate, as provided in Title 15, Utah Code, upon amounts that are overdue under these rules. This does not apply to insurers who fail to pay Personal Injury Protection expenses when due. These expenses shall bear interest as provided in 31A-22-309(5)(c).

R590-190-10. Minimum Standards for Prompt, Fair and Equitable Settlements.

(1) The insurer shall provide to the claimant a statement of the time and manner in which any claim must be made and the type of proof of loss required by the insurer.

(2) Within 30-days after receipt by the insurer of a properly executed proof of loss, the insurer shall complete its investigation of the claim and the first party claimant shall be advised of the acceptance or denial of the claim by the insurer unless the investigation cannot be reasonably completed within that time. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 30-days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, within 45-days after sending the initial notification and within every 45-days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation. Insurers are prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial. Any basis for the denial of a claim shall be noted in the insurer's claim file and must be communicated promptly and in writing to the first party claimant unless the first party claimant is represented by legal counsel or a public adjuster.

(3) Unless otherwise provided by law, an insurer shall promptly pay every valid insurance claim. A claim shall be overdue if not paid within 30-days after the insurer is furnished written proof of the fact of a covered loss and of the amount of the loss. Payment shall mean actual delivery or mailing of the amount owed. If such written proof is not furnished to the insurer as to the entire claim, any partial amount supported by written proof or investigation is overdue if not paid within 30-days. Payments are not deemed

overdue when the insurer has reasonable evidence to establish that the insurer is not responsible for the payment, notwithstanding that written proof has been furnished to the insurer.

(4) Insurers are prohibited from negotiating a claim settlement directly with a claimant who is not legally represented, if the claimant's rights may be affected by a statute of limitations, unless the insurer has given the claimant written notice of such limitation. Notice shall be given to first party claimants at least 30-days and to third party claimants at least 60-days before the date on which such time limit may expire unless the claimant has retained legal representation.

(5) Insurer are prohibited from making statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

R590-190-11. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance.

(1) When the insurance policy provides for the adjustments and settlement of automobile total losses for first party claimants on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(a) the insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file;

(b) the insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by:

(i) the cost of two or more comparable automobiles in the local market area when a comparable automobile is available or was available within the last 90-days to consumers in the local market area;

(ii) the cost of two or more comparable automobiles in areas proximate to the local market area, including the closest major metropolitan areas within or without the state, that are available or were available within the last 90-days to consumers when comparable automobiles are not available in the local market area pursuant to Subsection R590-190-11.(1)(b)(i);

(iii) one of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area; or

(iv) any source of determining statistically valid fair market values that meet all of the following criteria:

(A) the source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

(B) the source's database shall produce values for at least 85% of the makes and models for the last 15 model years, taking into account the values of all major options for such vehicles; and

(C) the source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary

expansion of parameters, such as time and area, to assure statistical validity.

(v) if the insurer is notified within 30-days of the receipt of the claim draft that the first party claimant cannot purchase a comparable vehicle for such market value, the company shall reopen its claim file and the following procedure(s) shall apply:

(A) the company may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the market value determined by the company at the time of settlement. Any such vehicle must be available through licensed dealers or private sellers;

(B) the company shall either pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;

(C) the company may elect to offer a replacement in accordance with the provisions set forth in Subsection R590-190-11.1(1)(a); or

(D) the company may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of the loss. The company is not required to take action under this subsection if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could be purchased for the market value determined by the company before applicable deductions.

(c) when a first party claimant automobile total loss is settled on a basis which deviates from the methods described in Subsections R590-190-11.1(a) and (b), the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deductions for salvage, must be measurable, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(2) Total loss settlements with a third party claimant shall be on the basis of the market value or actual cost of a comparable automobile at the time of loss. Settlement procedures shall be in accordance with Subsection R590-190-11.1(b) and (c).

(3) Where liability and damages are reasonably clear, insurers are prohibited from recommending that third party claimants make a claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(4) Insurers are prohibited from requiring a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(5) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands initiated by the insurer. Subrogation recoveries may be shared on a proportionate basis with the first party claimant when an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered. The recovery shall be applied first to reimburse the first party claimant for the amount or share of the deductible when the full amount or share of the deductible has been recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is

retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. If subrogation is initiated but discontinued, the insured shall be advised.

(6) If an insurer prepares or approves an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. If the insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(8) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(9) Where coverage exists, loss of use payment shall be made to a claimant for the reasonably incurred cost of transportation, or for the reasonably incurred rental cost of a substitute vehicle, including collision damage waiver, unless the claimant has physical damage coverage available, during the period the automobile is necessarily withdrawn from service to obtain parts or effect repair, or, in the event the automobile is a total loss and the claim has been timely made, during the period from the date of loss until a reasonable settlement offer has been made by the insurer. The insurer is prohibited from refusing to pay for loss of use for the period that the insurer is examining the claim or making other determinations as to the payability of the loss, unless such delay reveals that the insurer is not liable to pay the claim. Loss of use payments shall be an amount in addition to the payment for the value of the automobile.

(10) Subject to Subsections R590-190-11.1(1) and (2), an insurer shall fairly, equitably and in good faith attempt to compensate a claimant for all losses incurred under collision or comprehensive coverages. Such compensation shall be based at least, but not exclusively, upon the following standards:

(a) an offer of settlement may not be made exclusively on the basis of useful life of the part or vehicle damaged;

(b) an estimate of the amount of compensation for the claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle;

(c) actual cash value shall take into account the cost of replacement of the vehicle and/or the part for which compensation is claimed;

(d) an actual estimate of the true useful life remaining in the part or vehicle shall be taken into account in establishing the amount of compensation of a claim; and

(e) actual cash value shall include taxes and other fees which shall be incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred.

(11) Insurers are prohibited from demanding reimbursement of personal injury protection payments from a first-party insured of payments received by that party from a settlement or judgement against a third party.

(12) The insurer shall provide reasonable written notice to a claimant prior to termination of payment for automobile storage charges and documentation of the denial as required by Section R590-190-4. Such insurer shall provide reasonable time for the claimant to remove the vehicle from storage prior to the termination of payment.

(13) If the insurer makes a deduction for the salvage value of a total loss retained by the claimant, the insurer shall furnish the name and address of the salvage dealer who will purchase the salvage for the amount deducted if requested by the claimant.

R590-190-12. Unfair Claims Settlement Practices Applicable to Automobile Insurance.

The following acts or practices are defined as unfair claims settlement practices pertaining to automobile insurance:

(1) using as a basis for cash settlement with a claimant an amount which is less than the amount which the insurer would be charged if repairs were made, unless such amount is agreed to by the claimant or provided for by the insurance policy;

(2) refusing to settle a claim based solely upon the issuance of, or failure to, issue a traffic citation by a police agency;

(3) failing to disclose all coverages for which an application for benefits is required by the insurer;

(4) failing in good faith to disclose all coverages, including loss of use, household services, and any other coverages available to the claimant;

(5) requiring a claimant to use only the insurer's claim service in order to perfect a claim;

(6) failing to furnish the claimant, when requested, with the name and address of the salvage dealer who will purchase the salvage for the amount deducted by the insurer in a total loss settlement;

(7) refusing to disclose policy limits when requested to do so by a claimant or claimant's attorney;

(8) using a release on the back of a check or draft which requires a claimant to release the company from obligation on further claims in order to process a current claim when the company knows or reasonably should know that there will be future liability on the part of the insurer;

(9) refusing to use a separate release of a claim document rather than one on the back of a check or draft when requested to do so by a claimant;

(10) intentionally offering less money to a first party claimant than the claim is reasonably worth, a practice referred to as "low-balling;"

(11) refusing to offer to pay claims based upon the Doctrine of Comparative Negligence without a reasonable basis for doing so; and

(12) imputing the negligence of a permissive user of a vehicle to the owner of the vehicle in a bailment situation.

R590-190-13. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

(1) Replacement Cost Value:

When the policy provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) when a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacements not otherwise excluded by the policy, shall be included in the loss. The insured is only responsible for the applicable deductible; and

(b) when a loss requires replacement or repair of items and the repaired or replaced items do not match in color, texture, or size, the insurer shall repair or replace items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured is only responsible for the applicable deductible.

(2) Actual Cash Value:

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as the replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of relevant documentation from the claim file detailing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value, as set forth above, is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

R590-190-14. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
1999

31A-2-201
31A-26-301
31A-26-303
31A-21-312
31A-2-308



Insurance, Administration
R590-194
Coverage of Dietary Products for
Inborn Errors of Amino Acid or Urea
Cycle Metabolism

NOTICE OF PROPOSED RULE
(New)

DAR FILE NO.: 21765
FILED: 12/28/1998, 18:31
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to establish minimum standards of coverage for dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism at levels consistent with the major medical benefit provided under a disability insurance policy.

SUMMARY OF THE RULE OR CHANGE: This rule applies to all disability policies sold in Utah. It provides a billing standard for medical providers and insurers processing claims for the dietary products. It also sets minimum standards for disability policies and general provisions to be used within these policies regarding the coverage of dietary products for the treatment of inborn errors of amino acid or urea cycle metabolism.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-22-614.5, and 31A-22-623

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** No cost or savings since the department is only required to write a rule, which can be handled with no additional personnel or cost.

❖**LOCAL GOVERNMENTS:** There would be no impact since the rule and law does not affect or require action by local governments.

❖**OTHER PERSONS:** There will be cost to those insurers that previously excluded coverage for the specific dietary products addressed in the rule since they will need to rewrite their forms to now provide the coverage. This will be a minimal cost of doing business expense. Many health insurers have indicated that they already provide this coverage. However, for those that don't, there will be an additional cost to provide this new coverage. The major provider of these dietary products bill commercial insurers for approximately 15 claims per month. This excludes those billed and paid by medicaid. There will be savings to consumers whose coverage did not previously pay for these claims.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be cost to those insurers that previously excluded coverage for the specific dietary products addressed in the rule since they will need to rewrite their forms to now provide the coverage. This will be a minimal cost of doing business expense. Many health insurers have indicated that they already provide this coverage. However, for those that don't, there will be an additional cost to provide this new coverage. The major provider of these dietary products bill commercial insurers for approximately 15 claims per month. This excludes those billed and paid by medicaid. There will be savings to consumers whose coverage did not previously pay for these claims.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have little impact on most of the insurers doing business in Utah since most already provide this coverage for the specific dietary products and diagnoses addressed in the rule.

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

Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/18/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 02/11/1999, 10:00 a.m., 3112 State Office Building, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/19/1999

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.****R590-194-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism at levels consistent with the major medical benefit provided under a disability insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary products in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all disability insurance policies sold in Utah.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Each claim for coverage of dietary products for the treatment of inborn errors of amino acid or urea cycle metabolism requires a prescription by a physician that specifies the quantity prescribed and duration of the prescription.

(2) The products prescribed must be the major source of nutrition for the patient.

(3) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(4) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for dietary products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declare to be severable.

**KEY: insurance law
1999**

**31A-2-201
31A-22-614.5
31A-22-623**



**Natural Resources; Oil, Gas and
Mining; Non-Coal
R647-2
Exploration**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE No.: 21757
FILED: 12/23/1998, 11:22
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is proposed to give operational guidance to the Division in the collection of permit fees for exploration permits.

SUMMARY OF THE RULE OR CHANGE: The rule amendment sets out a fee payment and collection protocol for exploration permits in the Minerals Regulatory Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-6

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: It is anticipated that about \$30,000 in state general funds will be saved by the implementation of this rule. That amount would instead be funded by permittees requiring exploration permits.

❖LOCAL GOVERNMENTS: The number of local governmental entities performing minerals exploration operations in the state is not significant. There are no local governmental entities performing exploration activities in the state, thus there is no anticipated cost or savings impact.

❖OTHER PERSONS: The Division looked at the other persons who may possibly be included in the anticipated aggregate cost or savings impact from or because of this rule amendment, and found none.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The minerals industry will be required to pay approximately \$30,000 in permit fees, which would fund a part of one position to help administer the Minerals Exploration Program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Natural Resources (DNR) Administration was consulted by personal communication on December 23, 1998. No additional comments were offered at that time, other than that the DNR agreed with the Division's cost and savings estimates.

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

Natural Resources
Oil, Gas and Mining; Non-Coal
Suite 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or by Internet E-mail at rdaniels@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 01/27/1999, 10:00 a.m., Suite 1040-A, 1594 West North Temple, Salt Lake City, UT 84114-5801.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.

R647-2. Exploration.

R647-2-101. Filing Requirements and Review Procedures.

1. A complete Notice of Intention to Conduct Exploration (FORM MR-EXP) or a letter containing all the required

information must be filed with the Division before exploration begins. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the Division will review the proposal and notify the operator in writing:

2.11. That the notice of intention is complete; or

2.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2.13. The Division will review any subsequent filings of information within 10 working days of receipt.

3. A notice of intention to conduct exploration will not require Division approval, unless more than five surface acres of disturbance is proposed. However, all of the required information must be provided to the Division. Division approval is required for all variances from Rule R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

4. Exploration that will disturb more than five surface acres at any given time will require Division approval and a reclamation surety before exploration begins. (See Rule R647-2-111.)

5. Developmental drilling conducted within the disturbed area of an approved large mining operation or within the five acre disturbed area of a small mining operation does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter.

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

6.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-2-102. Duration of the Notice of Intention.

A complete Notice of Intention to Conduct Exploration or comparable letter shall be valid until November 30th of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated

length of time required to complete exploration and reclamation. Failure by the operator to pay permit fees required by R647-2-101(6) will suspend an operator's authorization to conduct exploration operations.

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KEY: minerals reclamation

[1988]1999

40-8-1 et seq.

Notice of Continuation July 27, 1998



Natural Resources; Oil, Gas and Mining; Non-Coal

R647-3

Small Mining Operations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21758

FILED: 12/23/1998, 11:22

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to give operational guidance to the Division in the collection of permit fees for small mining operations permits.

SUMMARY OF THE RULE OR CHANGE: The rule amendment sets out a fee payment and collection protocol for small mining operations permits in the Minerals Regulatory Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-6

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: It is anticipated that about \$30,000 in state general funds will be saved by the implementation of this rule. That amount would instead be funded by permittees requiring small mining operations permits.

❖LOCAL GOVERNMENTS: The number of local governmental entities extracting minerals in the state is not significant. There are only two local governmental entities working small mining operations in the state, the combined cost to these two entities will be \$200 per year.

❖OTHER PERSONS: The Division looked at the other persons who may possibly be included in the anticipated aggregate cost or savings from or because of this rule amendment, and found none.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The minerals industry will be required to pay approximately \$30,000 in permit fees, which would fund a part of one technically-oriented position to help administer the small mining operations permitting in the Minerals Regulatory Program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Natural Resources (DNR) Administration was consulted by personal communication on December 23, 1998. No additional comments were offered at that time, other than that the DNR agreed with the Division's cost and savings estimates.

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

Natural Resources
Oil, Gas and Mining; Non-Coal
Suite 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or by Internet E-mail at rdaniels@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 01/27/1999, 10:00 a.m., Suite 1040-A, 1594 West North Temple, Salt Lake City, UT 84114-5801.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.

R647-3. Small Mining Operations.

R647-3-101. Filing Requirements and Review Procedures.

1. A Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) or a letter containing all the required information must be filed with the Division before a small mining operation begins. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing:

2.11. that the notice of intention is complete, or

2.12. that the notice of intention is incomplete, and that additional information as identified by the Division will be required.

3. The Division will review any subsequent filings of information within 10 working days of receipt.

4. A notice of intention to commence small mining operations will not require Division approval. However, all of the required information must be provided to the Division.

Division approval is required for all variances from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

5. Filing of the complete notice of intention shall enable the operator to conduct small mining operations provided that the

operator has paid all permit fees required by R647-3-101(7). A failure to pay permit fees required by R647-3-101(7) will suspend an operator's authorization to conduct small mining operations. The operator is responsible for conducting mining and reclamation activities in compliance with the requirements of the notice of intention, the Act, and these Rules.

6. The operator must notify the Division no later than 30 days after beginning small mining operations.

7. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

7.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for

7.11.11. Small Mining Operations (less than 5 disturbed acres)

7.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

7.13. A permittee may avoid payment of the fee by complying with the following requirements:

7.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

7.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

7.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-3-102. Duration of the Notice of Intention.

The notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation. However, failure by the operator to pay permit fees required by R647-3-101(7) will suspend an operator's authorization to conduct small mining operations.

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KEY: minerals reclamation

[1994]1999

40-8-1 et seq.

Notice of Continuation July 27, 1998



Natural Resources; Oil, Gas and Mining; Non-Coal

R647-4

Large Mining Operations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21759

FILED: 12/23/1998, 11:22

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to give operational guidance to the Division in the collection of permit fees for large mining operations permits and to modify the Division's procedures to reflect changes mandated by S.B. 147, passed in the 1998 session of the Utah State Legislature.

(**DAR Note:** S.B. 147 is found at 1998 Utah Laws 190, and is effective as of May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: The rule amendment sets out a fee payment and collection protocol for large mining operations permits in the Minerals Regulatory Program, assigns the approval of the form and amount of reclamation sureties to the Division, and updates rule language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-8-6

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** It is anticipated that about \$35,000 in state general funds will be saved by the implementation of this rule. That amount would instead be funded by permittees requiring large mining operations permits.

❖**LOCAL GOVERNMENTS:** The number of local governmental entities extracting minerals in the state is not significant. There are only two local governmental entities working large mining operations in the state, the combined cost to these two entities will be \$1,100 per year.

❖**OTHER PERSONS:** The Division looked at the other persons who may possibly be included in the anticipated aggregate cost or savings from or because of this rule amendment, and found none.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons will be required to pay approximately \$35,000 in permit fees, which would fund a part of one technically-oriented position to help administer the large mining operations permitting in the Minerals Regulatory Program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Natural Resources (DNR) Administration was consulted by personal communication on December 23, 1998. No additional comments were offered at that time, other than that the DNR agreed with the Division's cost and savings estimates.

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

Natural Resources
Oil, Gas and Mining; Non-Coal
Suite 1210, Natural Resources Building
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or by Internet E-mail at rdaniels@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 01/27/1999, 10:00 a.m., Suite 1040-A, 1594 West North Temple, Salt Lake City, UT 84114-5801.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.**R647-4. Large Mining Operations.****R647-4-101. Filing Requirements and Review Procedures.**

A Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) or a letter containing all the required information must be approved by the Division before mining operations begin.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

5.14. All permit fees which remain uncollected 30 days after the due date will be turned over to the Utah Office of Debt Collection.

R647-4-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted. Additionally, failure by the operator to pay permit fees required by R647-3-101(5) will suspend an operator's authorization to conduct mining operations and may after notice and hearing result in a withdrawal of the approved notice of intention.

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R647-4-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division.

2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Division [Board] is held by the Division of Forestry, Fire and State Lands [and Forestry], The School and Institutional Trust Lands Administration, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the final amount of surety required to reclaim the mine site. The surety amount [based on site specific calculations reflecting the Division's cost to reclaim the site] will be based upon (a) the technical details of the approved mining and reclamation plan, (b) the proposed post mining land use, and (c) projected third party engineering and administrative costs to cover Division expenses incurred under a bond forfeiture circumstance. An operator's surety estimate will be accepted if it is accurate and verifiable. The Division may accept surety estimates based upon the Minerals Reclamation Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16 [Board]. Acceptable forms may include:

- 4.11. Corporate surety bond;
- 4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. [In addition, the] The Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

.....

KEY: minerals reclamation

[1994]1999

40-8-1 et seq.

Notice of Continuation July 27, 1998



**Tax Commission, Auditing
R865-6F-34**

**Qualified Subchapter S Subsidiaries
Pursuant to Utah Code Ann. Section
59-7-701**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 21760
FILED: 12/23/1998, 16:00
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-7-701 provides that an S corporation shall be taxed for state purposes in the same manner as taxed for federal purposes.

SUMMARY OF THE RULE OR CHANGE: The proposed rule section provides that an entity that meets the federal definition of a qualified subchapter S subsidiary will be treated for state corporate tax purposes in the same manner it is treated for federal income tax purposes. The rule section also indicates how the S corporation parent of a qualified subchapter S subsidiary determines nexus and how the S corporation parent calculates the payroll, property, and sales factors for purposes of apportioning income to the state.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-7-701

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: The proposed rule section reflects Tax Commission practice, and will not impact state budget.
 - ❖LOCAL GOVERNMENTS: The proposed rule section reflects Tax Commission practice, and will not impact local government.
 - ❖OTHER PERSONS: The proposed rule section reflects Tax Commission practice, and will not impact other persons.
- COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected businesses are already following these procedures, therefore, there will be no compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on business as amendment follows current practice.

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

Tax Commission
Auditing
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah

property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and
2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

KEY: taxation, franchise

[October 14, 1998]1999

59-7-701

Notice of Continuation April 10, 1997



Tax Commission, Auditing
R865-6F-35
S Corporation Determination of Tax
Pursuant to Utah Code Ann. Section
59-7-703

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21761

FILED: 12/23/1998, 16:00

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-7-703 provides that an S corporation shall withhold a tax on its nonresident shareholders. This tax shall be determined based on items of income and loss from Schedule K of the 1120S federal form. The section also requires the Tax Commission to determine, by rule, the rate that an S corporation shall withhold for its nonresident shareholders.

SUMMARY OF THE RULE OR CHANGE: The proposed rule section clarifies how S corporations with nonresident shareholders will compute their income from the federal form. The proposed rule section also sets forth the rate that an S corporation shall withhold for nonresident shareholders and information the S corporation must provide with regards to its nonresident shareholders.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-7-703

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: The proposed rule will not alter the tax liability of the S corporation or the nonresident shareholder, therefore, there is no impact to state budget.
- ❖LOCAL GOVERNMENTS: The proposed rule will not alter the tax liability of the S corporation or the nonresident

shareholder, therefore, there is no impact to local government.

❖OTHER PERSONS: The proposed rule will not alter the tax liability of the S corporation or the nonresident shareholder, therefore, there is no impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule will not alter the tax liability of the S corporation or the nonresident shareholder. However, since the proposed rule section will enable the S corporation to withhold an amount of tax closer to the actual tax liability of the nonresident shareholder, less of these shareholders will need to file a Utah income tax return to receive a refund of taxes overwithheld by the S corporation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on business, however, the amendment will provide an easier process for compliance.

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

Tax Commission
Auditing
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

A. For purposes of Section 59-7-703(1)(a)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by adding back to the line on the Schedule K labeled "Income (loss)" any amount deducted on that schedule for charitable contributions. If the S corporation was not required to complete the line labeled "Income (loss)" on the Schedule K, a pro forma calculation of the amount that would have been entered on the "Income (loss)" line shall be used for purposes of this rule.

B. The rate that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

1. A deduction equal to 15 percent of the Utah income attributable to nonresident shareholders shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

a) An S corporation that is entitled to subtract a loss carryforward and that elected, under the laws in effect prior to January 1, 1994, to use Option A as the method to pay its taxes, shall apply the 15 percent deduction to Utah income attributable to nonresident shareholders after the subtraction for loss carryforwards.

2. The tax shall be computed using the maximum Utah individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under B.1.

C. An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

1. name;
2. social security number;
3. percentage of S corporation held; and
4. amount of Utah tax paid or withheld on behalf of that shareholder.

KEY: taxation, franchise

[October 14, 1998]1999

59-7-703

Notice of Continuation April 10, 1997



Tax Commission, Property Tax

R884-24P-61

1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21762

FILED: 12/23/1998, 16:00

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-405 imposes a 1.5% uniform fee on certain vehicles. Section 59-2-104 indicates that the situs of all taxable property is the area where it is located.

SUMMARY OF THE RULE OR CHANGE: The amendment will clarify the definition of vans.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The amendment will more clearly define the definition of a van and will not impact state budget.

❖LOCAL GOVERNMENTS: The amendment will more clearly define the definition of a van and will not impact local government.

❖OTHER PERSONS: The amendment will more clearly define the definition of a van and will not impact other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment is only being made to clarify the definition of a van. There is no compliance cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on business. Amendment clarifies definition of vans.

THE FULL TEXT OF THIS RULE 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 RULE TO:

Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

KEY: taxation, personal property, property tax, appraisal
[December 18, 1998]1999 41-1a-202
Notice of Continuation May 8, 1997 59-2-104
 59-2-401
 59-2-402
 59-2-405



Transportation, Motor Carrier **R909-1** Safety Regulations for Motor Carriers

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 21756
 FILED: 12/23/1998, 07:48
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is to remove, amend, and redesignate certain provisions of the Federal Motor Carriers Safety Regulations concerning financial responsibility; general applicability and definitions; accident record keeping, qualifications of drivers, driving of commercial motor vehicles; hours of services; and inspection, repair and maintenance.

SUMMARY OF THE RULE OR CHANGE: 387.5 the definition of "for-hire carriage means the business of transporting for compensation, the goods or property of another; the definition of "motor carrier" is revised to make it consistent with the definition as it appears in Sec. 390.5; 387.27(b)(4) the term "contract motor carrier" replaces "motor carrier under contract"; 387.29 adopt a more direct definition for "For hire motor carrier of passengers" to mean a person engaged in the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property of another"; 390.3(f)(2) to delete the following sentence "The accident recordkeeping requirements of 390.15 of this part remain applicable to the entities identified in this paragraph when engaged in the interstate charter transportation of passengers"; 390.5 definitions; in the definition of "accident" the term "highway" is substituted for the term "public road"; a definition of highway is added "Highway means any road, street, or way, whether on public or private property, open to public travel. "Open to public travel" means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public roads are not

considered restrictive gates; 390.5 the term "regularly employed driver" will be replaced with "single-employer driver", "intermittent, casual, or occasional driver" will be replaced with the term "multiple-employer driver" to clarify both regulations; revise the definition of principal place of business and the new Sec. 390.29 to extend these recordkeeping allowances and provisions to all records required under parts 382, 387, 390, 391, 395, 396, and 397; the heading for 391.11 is changed from "Qualifications of drivers" to "General qualifications of drivers"; 391.11(b)(4) and 391.11(b)(5) are placed under a new heading, Responsibilities of drivers, Sec. 391.13; 391.11(b)(7) is redesignated to 391.11(b)(5); 391.11(b)(10) redesignated at 391.11(b)(8); 391.11(b)(11) Is removed, while leaving the requirement for an application to be in the file under 391.21; 391.15(b)(2) is added requiring a driver to notify their employer before the end of the business following the day the driver receives notice that his/her license, permit or privilege to operate a commercial motor vehicle has been revoked, suspended or withdrawn; 391.25 is revised to require motor carriers to obtain responses from each state agency to the inquiry concerning drivers records on an annual basis; 391.33(a)(1) replace the words "valid operator's license" with "valid commercial driver's license as defined in Sec. 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements"; 391.51 General requirements for driver qualification files; 391.61 Drivers who were regularly employed before January 1, 1971; 391.63 Multi-employer drivers; 391.65(b) Drivers furnished by other motor carriers; 391.67 Farm Vehicle drivers of articulated commercial motor vehicles; 391.68 Private motor Carrier of passengers (nonbusiness); 391.69 Private motor carriers of passengers (business); 391.71 removed; 392.9 Safe loading; 392.9(b) removed; 392.13 removed; 392.15 removed; 392.20 removed; 392.22(b) placement of warning devices; 392.25 Flame producing devices; 392.42 removed; 392.51 Reserve fuel; materials of trade; 392.52 removed; 392.62 Safe operation, buses; 392.68 removed; 395.1 Scope of this part; renumbering of (h), (i), (j), (k), (l), (m), (n), (o); 395.2 definitions "on duty time"; 395.8(k); 396.11(b) & (c); 396.13(b) Driver Inspection; 397.19(b) Instructions and documents; 393.5 definition of "anti-lock Brake System or ABS" is added; 393.55 Antilock brake system; 393. 60 Glazing of openings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-17-103

FEDERAL REQUIREMENT FOR THIS RULE: 49 CFR 350-399

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Regulations Management Corporation, 49 CFR 350-399, October 1, 1998

ANTICIPATED COST OR SAVINGS TO:

- ❖THE STATE BUDGET: This amendment does not require an increased workload or cost to state government.
- ❖LOCAL GOVERNMENTS: This amendment does not require an increased workload or cost to local government.
- ❖OTHER PERSONS: In requiring motor carriers to obtain a copy of the driver's motor vehicle record on an annual basis, they will realize an additional \$4.25 charge per driver, per year. With an average of 6 drivers per company this will be

an additional cost of \$25.50 per company. In removing the requirement for a copy of the previous day's vehicle inspection report to be carried in each vehicle, companies will see an approximate savings of \$.06 per vehicle. There are approximately 5,287 motor carriers, with an approximate 30,497 vehicles. Showing an average of 6 vehicles per company. Using each vehicle 5 days a week for 52 weeks this will show a savings of \$94. The average overall savings per company will be \$68.50.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In requiring motor carriers to obtain a copy of the driver's motor vehicle record on an annual basis, they will realize an additional \$4.25 charge per driver, per year. With an average of 6 drivers per company this will be an additional cost of \$25.50 per company. In removing the requirement for a copy of the previous day's vehicle inspection report to be carried in each vehicle, companies will see an approximate savings of \$.06 per vehicle. There are approximately 5,287 motor carriers, with an approximate 30,497 vehicles. Showing an average of 6 vehicles per company. Using each vehicle 5 days a week for 52 weeks this will show a savings of \$94. The average overall savings per company will be \$68.50.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that there will be an average savings per company of \$68.50.

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

Transportation
Motor Carrier
Calvin Rampton
4501 South 2700 West
Box 148240
Salt Lake City, UT 84114-8240, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Tamy L. Scott at the above address, by phone at (801) 965-4752, by FAX at (801) 965-4847, or by Internet E-mail at tscott@dot.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Tamy L. Scott, Transportation Safety Investigator

R909. Transportation, Motor Carrier.

R909-1. Safety Regulations for Motor Carriers.

R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399, as contained in the October 1, ~~1997~~1998 edition as printed by the Regulations Management Corporation Service, is incorporated by reference, except for Parts 391.11(b)(1), 395.1(l), 395.1(m), 395.1(n) and 395.1(o). ~~[In addition, amendments to the same edition, which appear in the November 1, 1997, December 1,~~

1997, January 1, 1998, February 1, 1998, March 1, 1998, April 1, 1998, and May 1, 1998, are incorporated by reference within this rule.] These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5 and UCA 72-9-102(4) engaged in Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

C. Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, UCA 53-3-303.5 for intrastate drivers under R708-34,

D. Drivers involved wholly in intrastate commerce shall be at least 18 years old; unless transporting placarded amounts of hazardous materials; or 16 or more passengers including the driver.

E. Drivers in involved in interstate commerce shall be at least 21 years old.

KEY: trucks, transportation safety

[September 1, 1998]1999

Notice of Continuation March 31, 1997

72-9-103

72-9-104

54-6-9

63-49-4



**Workforce Services, Employment
Development
R986-414
Income**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21763

FILED: 12/28/1998, 09:36

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for this filing is to incorporate revised Food Stamp Program standard utility allowance deductions as authorized by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS). These new standards will be effective for all benefits issued beginning March 1, 1999.

SUMMARY OF THE RULE OR CHANGE: This rule change implements mandatory standard utility deductions (SUA's) for all households participating in the Food Stamp Program. When food stamp benefits are calculated, recipients are allowed a deduction for their shelter expenses that exceed 50% of their adjusted net income. The amount of that deduction cannot exceed limits established by the Food and Nutrition Service (FNS). Households with qualifying heating or cooling costs will be allowed a monthly deduction of \$150. Households with qualifying utility costs which do not include a heating or cooling cost will be allowed a monthly deduction

of \$102. Households with only a telephone expense will be allowed a \$20 monthly deduction.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-103

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Households currently participating in the Food Stamp Program may end up with an adjustment to the allowable deduction for their shelter expenses. This may result in a change in benefits. However, changes in benefit levels do not impact the state budget because all Food Stamp Program benefits are funded by the federal government. The State does, however, pay one half of the administrative costs related to this program. Those administrative costs associated with implementing this change are absorbed in the Department's cost of operating the Food Stamp Program. Those costs are not distinguishable or significant.

❖LOCAL GOVERNMENTS: Local governments are not involved in the administration of the Food Stamp Program. This change has no direct impact on local governments.

❖OTHER PERSONS: This change modifies the application of the standard utility allowance (SUA) to the benefit calculation for Food Stamp Program recipients with qualifying utility costs. Households must now choose from one of three possible SUA's. Those households with qualifying utility expenses which include a heating or cooling expense will be allowed a deduction of \$150 per month. Households with qualifying utility expenses other than heating and cooling expenses will now be allowed a deduction of \$102 per month. Households which claim only a telephone expense will be allowed a \$20 deduction. Based on caseload information for September 1998, there were 2,867 Food Stamp households claiming actual utility costs (an option under the current policy). 297 of those claimed heating and cooling expenses. Eleven of those cases claimed expenses greater than the \$150 standard. The remaining 286 cases claimed expenses less than \$150. For households with expenses greater than the standard, benefits may decrease. For households with expenses less than the standard, benefits may increase. For those households without heating and cooling costs, there may also be a change in benefit amount. Of the 2,570 households not claiming heating and cooling expenses, 1,839 claimed actual expenses that were greater than the standard of \$102. The remaining 731 households claimed expenses that were less than the standard of \$102. For households with expenses greater than the standard, benefits may decrease. For households with expenses less than the standard, benefits may increase. The change to the SUA effects each case differently. The impact of this deduction on the benefit calculation is a factor of the household's income, other shelter expenses, other allowable deductions, and the number of individuals in the household unit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Although implementation of a mandatory standard utility allowance does potentially increase the benefit level for certain Food Stamp Program participants, all increased benefit costs are borne by the Federal government. The Department does incur 50% of the associated administrative costs. Those

costs associated with implementing this change are absorbed in the Department's cost of operating the Food Stamp Program. Those costs are not distinguishable or significant. There are no compliance costs for other "affected persons."

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will impact the benefit level for less than 5% of current Food Stamp Program recipients. Some households will receive more benefits and others will receive less. The changes for most households will be negligible. It is not likely that businesses dealing directly with Food Stamp Program participants will realize a significant change in business or operating costs as a result. Those potential costs to businesses are unknown to the Department and are considered incalculable.

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

Workforce Services
Employment Development
Second Floor
1385 South State Street
Salt Lake City, UT 84115, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gordon Mendenhall at the above address, by phone at (801) 468-0125, by FAX at (801) 468-0160, or by Internet E-mail at gmeden@wscdomain.wscfam.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Robert C. Gross, Executive Director

**R986. Workforce Services, Employment Development.
R986-414. Income.**

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R986-414-410. Income Deductions.

The department adopts 7 CFR 273.9(d) and 7 CFR 273.11(c) and (d), 1995 edition and P.L. 104-193, Sec. 809.

1. Current Department Practices

a. The State ~~offers households with qualifying utility expenses, the option of choosing one of three standard utility allowances (SUA).~~ ~~[uses the single Standard Utility Allowance (SUA) option.]~~

~~[b. The telephone allowance is the same whether the client chooses actual utility costs or the SUA.~~

~~c.]b. The State uses ~~an~~one annualized SUA for households with a heating or cooling cost and one for households without heating or cooling costs.~~

~~d.]c. The SUA ~~for households with a heating or cooling cost~~ is \$150.~~

~~d. The SUA for households without a heating or cooling cost is \$102.~~

~~e. Households with only a telephone cost get a \$20 telephone deduction.~~

~~f.]f. The standard deduction is \$134.~~

~~f.]g. The maximum shelter deduction is \$275 for households with no elderly or disabled household member.~~

~~g.]h. The standard homeless shelter deduction is \$143. For the purposes of qualifying for this deduction, an individual residing in the home of another person is considered homeless if the living arrangement is expected to last 90 days or less.~~

~~h.]i. Amounts paid for legally obligated child support to or for non household members.~~

.....

KEY: income

~~[January 2, 1998]1999~~

35A-3-103

Notice of Continuation February 10, 1997



**Workforce Services , Workforce
Information and Payment Services**

R994-405

Ineligibility for Benefits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21745

FILED: 12/16/1998, 17:49

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The main purpose of the changes is to clarify and simplify the rule, but some substantive changes have been made. One change eliminates the medical exception in the "quit to accompany spouse" provision, which went beyond the scope of the statute (see Subsection 35A-4-5(1)(d) and Section R994-405-104). Volunteering for an upcoming layoff has been defined as a reduction of force separation. It had been considered reasonable cause for quitting under the equity and good conscience standard, which requires an immediate work search (Subsection R994-405-107(12)).

SUMMARY OF THE RULE OR CHANGE: These amendments affect only Sections R994-405-101 through R994-405-107, regarding the voluntary leaving of a job. The majority of the changes are nonsubstantive and are designed to clarify or simplify the rule. The medical exception which currently allows benefits to a claimant who "quits to accompany a spouse who is compelled to move to a new locale for medical reasons which are beyond the control of the spouse," has been deleted as being beyond the scope of the statute. Therefore, benefits would be denied in this case. This change would deny benefits to a few claimants each year. It

would relieve reimbursable employers of a minimal amount of charges. It would not affect contributing employers. The proposed section regarding acceptance of a voluntary layoff would define a separation as a reduction in force where an employee volunteers for an announced upcoming layoff, as it could not be predetermined whether a particular employee would be laid off if he did not volunteer. The current rule provides that the opportunity to volunteer for an announced layoff constitutes reasonable cause for quitting under the equity and good conscience standard and requires the employee to immediately begin an active work search. The change would relieve the employee of the immediate work search requirement. This change could have a minimal effect on an employer's liability as a few claimants would receive benefits who might have previously been denied due to lack of work search. However, the employer would currently be liable for future benefits as the quit was attributable to the employment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(1), 35A-4-502(1)(b), and 35A-4-405(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated financial effects of the nonsubstantive changes. There could be a minimal savings to the state as a reimbursable employer due to benefits not paid to a very small number of claimants as a result of the elimination of the "medical" exception to the quit to accompany spouse rule. The change of voluntary acceptance of layoff from a reasonable quit to a reduction of force could result in minimal additional charges if a former employee took some time off without looking for other work immediately after the layoff. He would now be allowed benefits. This situation occurs infrequently.

❖LOCAL GOVERNMENTS: There are no anticipated financial effects of the nonsubstantive changes. There could be a minimal savings to local government entities as reimbursable employers due to benefits not paid to a very small number of claimants as a result of the elimination of the "medical" exception to the quit to accompany spouse rule. The change of voluntary acceptance of layoff from a reasonable quit to a reduction of force could result in minimal additional charges if a former employee took some time off without looking for other work immediately after the layoff. He would now be allowed benefits. This situation occurs infrequently.

❖OTHER PERSONS: There are no anticipated financial effects of the nonsubstantive changes. There would be no savings to contributing employers as they would have been relieved of charges under the rule allowing benefits under the "medical" exception to the quit to accompany spouse rule as the separation was not attributable to the employer, but was for personal reasons. The Department's experience shows that less than ten claimants per year would be denied if the medical exception were eliminated. The change of voluntary acceptance of layoff from a reasonable quit to a reduction of force could result in minimal additional charges to reimbursable and contributing employers if a former employee took some time off without looking for other work immediately after the layoff, and was, therefore, denied benefits. This situation occurs infrequently. Under the

proposed rules a small number of claimants may be allowed benefits who would previously have been denied.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The nonsubstantive changes will result in no costs or savings to any persons. Whether a particular claimant, contributing employer, or reimbursable employer will experience any costs or savings due to the proposed changes depends completely upon whether he is one of the few participants who may be affected by these changes. As described above, the two proposed changes will impact very few claimants or employers each year. The cost or savings to a particular employer would be small. In one case (deletion of medical exception), a claimant would be denied benefits, and in the other case (voluntary layoff), he would be allowed. So an individual claimant could experience a much greater effect than an individual employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The nonsubstantive changes will have no fiscal impact on businesses. The elimination of the medical exception to the "quit to accompany spouse" provisions may result in minimal savings due to benefits not paid to a few claimants and, therefore, not charged to their employers. Contributing employers would also be relieved on future claims. Businesses could incur a minimal increase in benefit charges due to a few claimants being allowed benefits after a voluntary layoff separation. A few claimants may be allowed benefits under the proposed rule who would have been denied for failure to make an immediate work search under the current rule.

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

Workforce Services
Workforce Information and Payment Services
Fourth Floor
140 East 300 South
PO Box 45277
Salt Lake City, UT 84145-0277 , or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Christopher Love at the above address, by phone at (801) 526-9291, by FAX at (801) 526-9394, or by Internet E-mail at wsadmpo.clove@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Robert C. Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-405. Ineligibility for Benefits.

R994-405-101. Voluntary Leaving - General Information.

[Voluntarily leaving work means that the employee severed the employment relationship as contrasted to a separation initiated by

~~the employer.] A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. [This is true regardless of how compelling the claimant's reasons were for making the decision to leave the work. Voluntary leaving will] A voluntary separation includes [not only] leaving existing work[, but also the failure] or failing to return to work after a [lay-off] layoff, suspension, or period of absence. [Voluntary leaving also includes failure to renew a contract as in the case of a school teacher or athlete.] Failing to renew an employment contract may also constitute a voluntary separation. [Section 35A-4-405 requires two standards of consideration following a voluntary separation from employment: good cause and equity and good conscience. If the claimant fails to establish good cause for leaving work, unemployment insurance benefits will not be denied if a denial of benefits would be contrary to the equity and good conscience standard as described in Section R994-405-103. It is necessary to assess the totality of the employment situation. Where there are mitigating circumstances it may not be equitable to deny benefits.] Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.~~

R994-405-102. Good Cause.

~~[(1)] Good cause is established if continuance of the employment would have had an adverse effect on the claimant which could not be controlled or prevented and necessitated immediate severance of the employment relationship, or if the work was illegal, or unsuitable new work.] To establish good cause, a claimant must show that continuing employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.~~

~~[(a)] (1) Adverse Effect on the Claimant.~~

~~(a) Hardship.~~

~~The separation must have been motivated by circumstances [which] that made the continuance of the employment a hardship or matter of [real] concern, sufficiently adverse to a reasonable person to outweigh the benefits of remaining employed. There must [be a showing of] have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by [continuance in] the employment. The claimant's [reasons for belief of the consequences of remaining on the job must be real, not imaginary, substantial, not trifling. These circumstances must be applied as to the average individual, not the supersensitive] decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.~~

~~(b) Ability to Control or Prevent.~~

~~Even though there is evidence of an adverse effect on the claimant, good cause [is] may not be established if the claimant:~~

~~[(1)] (i) reasonably could have continued working while looking for other employment, or~~

~~[(2)] (ii) had reasonable alternatives that would have made it possible [for him] to preserve [his] the job. Examples include using [including] approved leave, [transfer] transferring, or making adjustments to personal circumstances, or,~~

~~[(3)] (iii) [had not given] did not give the employer notice of the circumstances causing the hardship [so] thereby depriving the employer [would have] of an opportunity to make [adjustments which] changes that would [alleviate] eliminate the need to quit. An employee with grievances [about his employment must show an] must have made a good faith effort to work out the [problems] differences with the employer before quitting unless those efforts would [be] have been futile.~~

~~[(e)] (2) Illegal.~~

~~Good cause is established if the individual was required by the employer to violate [S] state or [F] federal law or if the individual's [his] legal rights were violated, [.] provided the employer was aware of the violation and refused to comply with the law.~~

~~[(f)] (3) Unsuitable New Work.~~

~~Good cause may also be established if a claimant left new work which, after a short trial period, [is shown to be materially] was unsuitable [for the claimant] consistent with the requirements of the suitable work test in Subsections 35A-4-405(3)(c) and 35A-4-405(3)(e). The fact [that] a job was accepted does not [in and of itself] necessarily make the job suitable. The longer a job is held, the more it tends to set the standard by which [the] suitability [of the job is to be judged] is measured. After a reasonable period of time a contention that the quit was motivated by unsuitability of the job is generally no longer persuasive.~~

R994-405-103. Equity and Good Conscience.

~~(1) [When the circumstances of the quit were not sufficiently compelling to justify an allowance of benefits for good cause, but] If the good cause standard has not been met, the equity and good conscience standard must be applied in all cases except those involving a quit to accompany, follow, or join a spouse as outlined in Section R994-405-104. If there were mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if [all of] the following elements are [present] satisfied:~~

~~(a) the decision is made in [connection] cooperation with the employer [by giving the employer an opportunity to provide information];~~

~~(b) the claimant acted reasonably;~~

~~[(c)] a denial would be inconsistent with the intent of the unemployment insurance program; and]~~

~~[(d)] (c) the claimant demonstrated a [continued] continuing attachment to the labor market.~~

~~(2) The elements of equity and good conscience are defined as follows:~~

~~(a) In Cooperation with the Employer.~~

~~[In administering the unemployment insurance program, the intent of the Department is to maintain a careful balance between claimants and employers and to make fairness the uppermost consideration. The employer is given an opportunity to provide information when the Department notifies him that a former employee has filed a claim for benefits. Such notice provides an opportunity to explain the reason for separation. The employer is also notified of any appeal with regard to the separation except as provided under Subsection 35A-4-403 (1)(c)(iii).] A decision is made in cooperation with the employer when the Department gives the employer an opportunity to provide separation information.~~

(b) The Claimant Acted Reasonably.

~~[Reasonable is defined as those actions which make the decision to quit logical, sensible or practical. The actions which might be acceptable for a member of a subculture are not the norm by which reasonableness is established. There must be mitigating circumstances which, although not compelling, may be considered as motivating a reasonable person to take similar action.]~~ The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action. Behaviors that may be acceptable to a particular subculture do not establish what is reasonable.

~~—(c) Consistent with the Purposes of the Act:~~

~~—The intent of the Act is to temper the hardships associated with unemployment and to provide stability for the economy by maintaining purchasing power, individual skills and a stable workforce.]~~

~~(d)](c) [Continued]~~ Continuing Attachment to the Labor Market.

~~[The claimant establishes his continued attachment to the labor market by taking]~~ A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted[~~result~~] in employment during the first week [after leaving work] subsequent to the separation and each week thereafter. [A demonstration of attachment to the labor market may include such actions as:] Evidence of an attachment to the labor market may include: making contacts with prospective employers, preparing resumes, and developing job leads. An active work search should have [been undertaken without] commenced immediately subsequent to the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market [during the first week of unemployment] may not be [allowed] disqualifying if it was not practical for the individual to seek work. [in circumstances including] Some examples of circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or [for] other circumstances[reasons] beyond the control of the claimant provided a [worksearch]work search [was] commenced as soon as practical.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

~~[An individual leaves work without good cause, regardless of the reason for the move, if either spouse quit to move with, follow or join, a lawful wife or husband, to or in a new place of residence from which it is not practical to commute to the employment. Even if such necessitous circumstances, including the expense of maintaining two separate households, or the need to keep a family together, were factors in the decision to move, benefits cannot be allowed. The only exception to this provision is where a claimant quits to accompany a spouse who is compelled to move to a new locale for medical reasons which are beyond the control of the spouse.]~~ If an individual quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact.

R994-405-105. Evidence and Burden of Proof.

~~[Since]~~ The claimant [is] was the moving party in a voluntary separation, [he] and is the best source of information with [regard] respect to the reasons for the quit. The claimant has the burden [of proof and must show that he had] to establish that the elements of [“]good cause[“] for quitting, or that he meets the requirements for allowance under the [or of equity and good conscience [provision before benefits can be allowed] have been met.

R994-405-106. Quit or Discharge.

(1) Refusal to Follow Instructions[~~—~~ Constructive Abandonment].

If the claimant [knew his job would be forfeit upon failure] refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, [but chose not to comply,] the [resultant] separation [was] is a quit[, not a discharge].

(2) Leaving Prior to Effective Date of Termination.

(a) ~~[When a worker leaves]~~ If an individual leaves work prior to the date of an impending reduction in force, [he will be considered to have quit] the separation is voluntary. [A worker has an obligation to remain on the job until the work is completed.] Notice of an impending layoff [is] does not establish good cause [to leave in order to get a head start in searching for other] for leaving work. However, the duration of available work may be a [mitigating] factor in [determining good cause or] considering whether a denial of benefits would be contrary to equity and good conscience. [, depending upon the reason for the decision to quit.] If [it is determined that] the claimant is not disqualified for quitting under Subsection 35A-4-405(1)(a), benefits shall be denied [under Subsection 35A-4-403(1)(c)] for the limited period of time the claimant [had been told by the employer that he] could have continued working, as [he failed] there was a failure to accept all available [suitable] work [for such weeks] as required under Subsection 35A-4-403(1)(c).

(b) An individual [cannot] may not escape a discharge disqualification under Subsection 35A-4-405(2)(a) by quitting [in advance of a virtually certain] to avoid a discharge [which] that would result in a denial of benefits. [A quit to avoid a virtually certain discharge] In this circumstance the separation shall be [treated] adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension [is] was reasonable[~~and non-discriminatory~~], leaving work rather than submitting to [such actions] the discipline, or failing to return to work at the end of the suspension period, is considered [to be] a voluntary quit [without good cause] unless the claimant was previously disqualified for a discharge under the provisions of Subsection 35A-4-405(2)(a).

(4) [Failure to Return at the End of a] Leave of Absence.

~~[When]~~ If a claimant takes a leave of absence for any reason and files a claim while [still] on such leave from [his] the employer, the claimant will be considered [“]unemployed[“] even though [he still has] there still may be an attachment to the employer. [However, his reason for taking the leave of absence will determine if he had good cause for quitting:] If [the] a claimant fails to return to work at the end of the leave of absence, [this is also considered] the separation is a voluntary quit, [which must result in

a denial of benefits if the claimant cannot show good cause or that a denial would be contrary to equity and good conscience.]

(5) Leaving Due to a Remark or Action of the Employer or a [Co-Worker]Coworker.

[When]If a worker [interprets remarks of co-workers or supervisors to mean]hears rumors or other information suggesting that he or she is to be discharged, the worker[claimant] has the responsibility to [assure himself]confirm, prior to leaving, that the employer intended to [terminate]end the employment relationship.[and] The claimant also has a responsibility to continue working until the date of [the]an announced discharge. If the claimant failed[he fails] to do so[, or was not to be discharged, he left work voluntarily.] and if the employer did not intend to discharge the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

[The separation is a quit if the employee]If a worker gives notice of a future date [when he plans to leave work]of leaving and is paid [his]regular wages through the [date of the]announced resignation date, the separation is a quit even [though]if the worker [he is]was relieved of work responsibilities prior to the effective date of the resignation. [The assignment of vacation pay to the period of time between the notice of intended resignation and the last date the employee planned to work does not change the character of the separation:]A separation is also a quit if [The worker who states that he is quitting,] a worker announces an intent to quit but agrees to continue working for an indefinite period [of time and will leave at the convenience of]as determined by the employer, [leaves voluntarily]even though the date of separation [is]was determined by the employer. [When]If a worker resigns, [and]later [changes his mind]decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the [determining]primary factor in [deciding]determining if the claimant quit or was discharged. For example[;], if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to [withdraw his]rescind the resignation, and[it would be held that] the separation was [voluntary]a quit.

(b) Discharge.

[When]If a worker [submits his]submitted a resignation to be effective at [some]a definite future date, [but is discharged prior to that date, the leaving is involuntary because the immediate cause of the separation is the result of the employer's action. If the employer does not pay regular wages through the period of the notice, but merely pays vacation pay which was not previously assigned to the period of the notice, the separation is still the result of a discharge which occurs prior to the date the worker planned to quit.]but was relieved of work responsibilities prior to that date, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. If the claimant was not paid regular wages through the balance of the notice period, the separation is a discharge. Merely assigning vacation pay, which was not previously assigned to the notice period, does not make the separation voluntary.

R994-405-107. Examples of [Specific]Reasons for Voluntary Separations.

[In all the following examples, the basic elements of good cause or equity and good conscience must be considered in determining eligibility for benefits. The following examples do not include all reasons for leaving employment:]

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. Occasionally, after giving notice, but prior to leaving the first job, [the]an individual may learn[learns that] the new job will not be[] available when promised, permanent, full-time, or [otherwise]suitable. Good cause [is]may be established in those circumstances if the claimant immediately attempted[, unless such an attempt was obviously futile,] to rescind [his]the notice, unless such an attempt would have been futile.[of impending quit and continue working with his current employer.] However, if it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit[s] the first job and subsequently [also leaves]quit the new job, a disqualification [will apply]shall be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

(a) A definite assurance of another job means [that]the claimant has [personally]been in contact with someone [in]with the authority to hire, has been given a definite date to begin working and [told]has been informed of the [under what]employment conditions [he will be hired]. [If he has been told of a possibility of a job opening and to report at the job site this circumstance implies only that he will be considered for hire, not a definite assurance of hire. Mere rumors of job openings are not job offers. Prospects of other work developed after leaving are relevant only in showing a genuine attachment to the labor force.]

(b) An immediate assurance of [another job]work generally means [that]the prospective job will begin within two weeks[; barring necessitous circumstances, of] from the last day [of]the claimant was scheduled to work on the former job[he is leaving]. Benefits [would]may be denied for failure to accept all available work under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the [interim]period between the two jobs. [If the job is to begin at a future date which is tentative and dependent on circumstances which cannot be definitely predicted, the claimant does not have good cause for leaving work.]

(2) [Part-time Work and]Reduction of Hours.

[A]The reduction of an employee's working hours [alone is]generally does not establish good cause for leaving [the]a job. [A reasonable person will remain partially employed as opposed to severing the relationship with the employer. If the claimant is earning less than his weekly benefit amount, he could receive a partial unemployment insurance check even though he has not been separated from the employer.]However, in[in extreme] some cases, [however,]a reduction of hours may [be so detrimental to the employee]result in personal or financial hardship so severe that the circumstances justify leaving. [All of the following elements are necessary to establish good cause for quitting without first obtaining other employment:]

— (1) The reduction involves a substantial number of hours in proportion to the number of hours normally worked:

— (2) The reduction is permanent or expected to be of a long duration:

— (3) The reduction in hours causes a serious financial burden, or adverse effect on personal circumstances including transportation and childcare, etc. A serious financial burden or adverse effect is demonstrated when circumstances result in a real hardship and the claimant could not make reasonable adjustments to his personal circumstances prior to quitting:

— (4) The claimant was not advised at the time he was hired that a reduction of hours was possible or pending or the reduction in the hours was not a customary and known condition of the job as in the case of school employees or seasonal workers:

— (5) The reduction was not at the request of the claimant, was beyond the claimant's control, and the claimant attempted in good faith to avoid the reduction in hours except where such an attempt was clearly futile, by discussing the circumstances with the employer and accepting all work which was reasonably available:

— (b) If any of the foregoing five elements are not present and good cause cannot be shown, the provisions of equity and good conscience may apply where there are mitigating circumstances or the reduction in hours was substantially unfair to the claimant. Mitigating circumstances include: (1) prospects of full-time work exist, but cannot be pursued while continuing to work part-time; (2) the employer failed to comply with prior representations he made to the claimant; (3) the claimant made prior concessions for the benefit of the employer, for example, specialized training or relocation; (4) the reduction in hours was not equitably distributed or rationally based; for example, seniority or job requirements.]

(3) Personal Circumstances.

There may be personal circumstances [which]that are sufficiently compelling or create sufficient hardship to [justify]establish good cause for leaving work, provided the individual made a reasonable attempt[s] to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although [E]leaving work to attend school [might]may be [justified on general principles but is not good cause for becoming unemployed within the meaning of the Act.]a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) [Conscientious Objection:]Religious Beliefs.

[For religious concerns to establish good cause for quitting]To support an award of benefits following a voluntary separation due to religious beliefs, there must be evidence that [the effects of]continuing work would have conflicted with good faith[~~honestly held~~] religious convictions. [This does not necessarily mean that any personal belief, no matter how unique, is entitled to this protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others or shared by all members of a religious sect in order to be good faith religious convictions. Where the individual was not called upon, as a condition of his employment,]If an individual was not required to violate [his]such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act.[he is not compelled to quit. A general abhorrence of war does not show a compelling need to quit work at an armory nor does membership in a religion which counsels against the use of alcohol preclude employment in a grocery store

or restaurant where alcoholic beverages are sold. A decision not to continue working under conditions which conflict with convictions does not justify leaving work unless there is evidence of a good faith change in personal convictions as shown by a change in lifestyle. However, a] A change in the job [requiring work in conflict with personal or religious convictions is good cause for leaving if the claimant has not previously worked under such conditions and the employer will not]requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) [Distance:]Transportation.

[An employee has the responsibility to arrange transportation to and from work within normal commuting patterns, unless it is customary in that job or occupation for the employer to provide transportation. When lack of transportation, beyond the control of the individual, prevents continuance of the work, good cause may be established provided the claimant has no other alternate means of transportation:]If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance.[An individual's preference for a discontinued mode of transportation to a substantially equal one is not good cause. The mere inconvenience of one kind of transportation as compared with another should not be confused with hardship. When] If a move resulted[change in residence results] in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor [which determines if the claimant quit with good cause.]to consider when adjudicating the separation.

(7) Marriage.

(a) [When an individual leaves work to be married, it is a personal choice is not good cause for quitting, even if the intended residence of the couple was too far for the claimant to commute to the work:]Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for voluntarily leaving work. Therefore, if the claimant left work to get married, benefits shall be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

(b) [When]If the employer has a rule [that requires]requiring the separation of an employee who marries a [co-worker]coworker, the separation is [involuntary]a discharge even [though]if the employer [may leave it to]allowed the couple to decide who [with]would leave.

(8) Health or Physical Condition.

(a) [A worker generally consults a physician prior to quitting to determine if the job was actually a factor contributing to the health problem:]Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be [established]supported by competent evidence. Even if the work [causes or aggravates]caused or aggravated a health problem, if there [are]were alternatives, such as treatment, [or]medication, or [the conditions of the work can be changed]altered working conditions to alleviate the problem, good cause for quitting is not established.

~~— (b) Leaving work because of an employer's failure to comply with government regulations concerning health and safety is good cause provided the employer was told of the problem and did not take corrective action. The degree of risk to health and safety must be substantial before leaving could be considered good cause.]~~

~~[(c)](b) [Some conditions of work, although meeting government safety and health standards, may present an undue risk to a particular worker because of unique personal conditions. Allergy is one example of unique circumstances that might require a job change or adjustment. However, i]If the risk to the health or safety of the claimant[is one borne] was shared by all those employed in the particular occupation, [and the claimant fails to show he-]it must be shown the claimant was affected to a greater extent than[the] other workers[in the same occupation, good cause for leaving is not established]. Absent such evidence, quitting was not reasonable. [A fear of potential health and safety problems is not good cause for quitting unless the claimant can show that the fear is justified.~~

~~— (d) Pregnancy is treated as any other temporary disability. Employers generally provide maternity leave if leave is provided for other medical disabilities. If leave is available, the claimant voluntarily quits by failing to accept or arrange leave or failing to return at the end of the leave.]~~

(9) Retirement and Pension.

~~Voluntarily [E]leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been[be] reasonable for an individual to take advantage of a retirement benefit, payment of unemployment benefits in [those circumstances would]this circumstance is not [be-]consistent with the intent of the Unemployment Insurance program, and[, therefore,] a denial of benefits [would]is not [be-]contrary to equity and good conscience. [However, if the employer required the employee to leave work at a certain age, or after an established number of years, the separation was involuntary.]~~

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct. Sexual harassment is a form of sex discrimination which is prohibited by Title VII of the United States Code[-] and the Utah Anti-Discrimination Act.[Sexual harassment is intimidation by a person of either sex against a person of the opposite or same sex. For sexual harassment to be discriminatory, the following three elements must be shown to exist:

~~— (1) Unwanted conduct or communication of a sexual nature which adversely affects a person's employment relationship or working environment, if:~~

~~— (a) submission to the conduct is either an explicit or implicit term or condition of employment, or~~

~~— (b) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or~~

~~— (c) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.~~

~~— (2) Unsolicited, deliberately sexual statements, gestures or physical contacts which are objectionable to the recipient,~~

~~— (3) Undermines the integrity of the workplace, destroys morale and offends legal and social standards of acceptable behavior.]~~

~~(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:~~

~~(i) submission to the conduct is either an explicit or implicit term or condition of employment, or~~

~~(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or~~

~~(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.~~

~~[(b)](c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.~~

(11) Discrimination.

~~A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct. It is [also]a violation of [F]federal law to discriminate against [any individual with respect to his]employees regarding compensation, terms, conditions, or privileges of employment, because of [the individual's-]race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive [an individual]them of employment opportunities or otherwise adversely affect [his]their employment status [as an employee-]because of the individual's race, color, religion, sex, age or national origin.~~

(12) Voluntary Acceptance of [Lay-off]Layoff.

~~[When]If an employer notifies employees that a [lay-off]layoff is going to take place and the employer gives the employees the [opportunity]option to volunteer for the [lay-off]layoff, those who do volunteer are separated due to reduction of force regardless of incentives.[it is considered that to deny benefits to the employees who become unemployed would be inconsistent with the intent of the unemployment insurance program. It would be contrary to equity and good conscience to deny benefits when the employer has made the decision to reduce the work force but the employer permits the employees to volunteer to become unemployed. Therefore, it is reasonable for an employee to take the lay-off in this situation and if there is a demonstration of a continued attachment to the labor force, benefits may be allowed provided the employee worked until the day established by the employer as the date of the lay-off. The employer would be liable for benefit costs as the separation is attributable to the employer's decision to reduce the work force by allowing an employee to volunteer for the lay-off.]~~

R994-405-108. Effective Date of Disqualification.

~~[(1)-]The]Δ disqualification under this section technically begins with the week the [claimant voluntarily quit the job:]separation occurred. However, to avoid [the]any confusion which [arises]may arise when a disqualification is made for a period of time prior to the filing of a claim, the claimant [with]shall be notified [that]benefits are denied beginning with the effective date of [a]the new or reopened claim. The disqualification shall continue[s] until the claimant returns to work in [a-]bona fide~~

covered employment and earns six times his or her weekly benefit amount, ~~[after the week in which the claimant left work.]~~ A disqualification ~~[which]that~~ begins in one benefit year ~~shall[with]~~ continue into a new benefit year unless purged by subsequent earnings. Severance or vacation pay may not be used to purge a disqualification.

~~[(2) If an individual is receiving remuneration which is attributed to a period of time following the last day on the job, including severance or vacation pay, the "week in which the claimant left work" is considered to be the last week for which remuneration is attributable since an individual is not "unemployed" while receiving remuneration from an employer. Severance or vacation pay cannot be used to purge a disqualification.]~~

KEY: unemployment compensation, employment, employee's rights, employee termination

~~[July 1, 1997]February 17, 1999~~

~~[35A-4-501(1)(b)]~~

~~35A-4-502(1)(b)~~

~~35A-1-104(4)~~

~~35A-4-405~~



Workforce Services , Workforce Information and Payment Services

R994-405

Ineligibility for Benefits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 21746

FILED: 12/16/1998, 17:49

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The main purpose for the proposed changes is the clarification and simplification of the rule. One subsection has been added to the reasons for discharge provisions, and it reflects current application of the rule.

SUMMARY OF THE RULE OR CHANGE: These amendments affect only Sections R994-405-201 through R994-405-209 regarding just cause from employment. Most of the changes are nonsubstantive and are designed only to clarify and simplify the rule. Subsection R994-405-208(6) regarding discharge due to incarceration has been added, but reflects current application of the rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(1), 35A-4-502(1)(b), and 35A-4-405(2)(a)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: None of the proposed amendments make any substantive change to the rule and would have no financial impact on the state.

❖LOCAL GOVERNMENTS: None of the proposed amendments make any substantive change to the rule and would have no financial impact on local government entities.

❖OTHER PERSONS: None of the proposed amendments make any substantive change to the rule and would have no financial impact on claimants or employers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments do not involve any changes to current procedures and would generate no compliance costs (or savings) to any persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As these amendments are nonsubstantive, they would have no fiscal impact on businesses.

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

Workforce Services
Workforce Information and Payment Services
Fourth Floor
140 East 300 South
PO Box 45277
Salt Lake City, UT 84145-0277 , or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Christopher Love at the above address, by phone at (801) 526-9291, by FAX at (801) 526-9394, or by Internet E-mail at wsadmpo.clove@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Robert C. Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-405. Ineligibility for Benefits.

R994-405-201. Discharge - General Definition.

~~[Ordinarily accepted concepts of justice are used in determining if a discharge is disqualifying under the "just cause" provisions of the Act. Just cause is defined as a job separation that is necessary due to the seriousness of actual or potential harm to the employer provided the claimant had knowledge of the employer's expectations and had control over the circumstances which led to the discharge. Just cause is not established if the reason for the discharge is baseless, arbitrary or capricious or the employer has failed to uniformly apply reasonable standards to all employees when instituting disciplinary action. The purpose of Subsection 35A-4-405(2) is to deny benefits to individuals who bring about their own unemployment by conducting themselves, with respect to their employment with callousness, misbehavior, or lack of consideration to a degree that the employer is justified in discharging the employee. However, when an employee is discharged by his employer, such discharge may have been the~~

result of incompetence, lack of skill, or other reasons which are beyond the claimant's control. The question which must be established by the evidence is whether the claimant is at fault in his resulting unemployment. Unemployment insurance benefits will be denied if the employer had just cause for discharging the employee. However, not every cause for discharge provides a basis to deny benefits. In order to have just cause for discharge pursuant to Subsection 35A-4-405(2)(a) there must be some fault on the part of the employee involved. A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits shall be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the worker.

R994-405-202. Just Cause.

~~[(1) The basic factors which establish just cause, and are essential for a determination of ineligibility are:]~~ To establish just cause for a discharge, each of the following three elements must be satisfied:

~~[(a)]~~ (1) Culpability.

~~[This is the seriousness of the conduct or the severity of the offense as it affects continuance of the employment relationship. The discharge must have been necessary to avoid actual or potential harm to the employer's rightful interests. A discharge would not be considered "necessary" if it is not consistent with reasonable employment practices. The wrongness of the conduct must be considered in the context of the particular employment and how it affects the employer's rights.]~~ The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there [is]was no expectation that [the conduct]it [with]would be continued or repeated, potential harm may not be shown, [and therefore it is not necessary to discharge the employee.] The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. A long term employee with an established pattern of complying with the employer's rules may not demonstrate by a single violation, even though harmful, that the infraction would be repeated. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

~~[(1) Longevity and prior work record are important in determining if the act or omission is an isolated incident or a good faith error in judgment. An employee who has historically complied with work rules does not demonstrate by a single violation, even though harmful, that such violations will be repeated and therefore require discharge to avoid future harm to the employer. For example: A long term employee who does not have a history of tardiness or absenteeism is absent without leave for a number of days due to a death in his immediate family. Although this is a violation of the employer's rules and may establish just cause for discharging a new employee, the fact that the employee has established over a long period of time that he complies with attendance rules shows that the circumstance is more of an isolated incident rather than a violation of the rules that is or could be~~

~~expected to be habitual. In this case because the potential for harm to the employer is not shown, it is not necessary for the employer to discharge the employee, and therefore just cause is not established.]~~

~~[(b)]~~ (2) Knowledge.

~~The [employee]worker must have had [a]knowledge of the conduct [which]the employer expected. [It is not necessary that the claimant intended to cause harm to the employer, but he should reasonably have been able to anticipate the effect his conduct would have.]~~ There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown that the worker should have been able to anticipate the negative effect of the conduct. Generally, [K]knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a [pertinent]written policy, except in the case of a [flagrant]violation of a universal standard of [behavior]conduct. [If the employer's expectations are unclear, ambiguous or inconsistent, the existence of knowledge is not shown.] A specific warning is one way [of showing that]to show the [employee]worker had knowledge of the expected conduct. After [the employee is given]a warning [he]the worker should [be]have been given an opportunity to correct the objectionable conduct. [Additional violations occurring after the warning would be necessary to establish just cause for a discharge.] If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

~~[(1) For Example: When the employer has an established procedure of progressive discipline, those procedures generally must have been followed in order to establish that the employee had knowledge of the expected behavior or the seriousness of the act. The exception is that very severe conduct, including criminal actions, may justify immediate discharge without following a progressive disciplinary program.~~

~~[(c) Control:~~

~~The conduct must have been within the power and capacity of the claimant to control or prevent.~~

~~(2) Just cause may not be established when the reason for discharge is based on mere mistakes, inefficiency, failure of performance as the result of inability or incapacity, inadvertence in isolated instances, good faith errors in judgment or in the exercise of discretion, minor but casual or unintentional carelessness or negligence. These examples of conduct are not disqualifying because of the lack of knowledge or control. However, continued inefficiency, repeated carelessness, or lack of care exercised by ordinary, reasonable workers in similar circumstances, may be disqualifying depending on the reason and degree of the carelessness, the knowledge and control of the employee.~~

~~(3) The term "just cause" as used in Subsection 35A-4-405(2)(a) does not lessen the requirement that there be some fault on the part of the employee involved. Prior to the 1983 addition of the term "just cause" the Department interpreted Section R994-405-202 to require an intentional infliction of harm or intentional disregard of the employer's interests. The intent of the Legislature in adding the words "just cause" to Subsection 35A-4-405(2)(a) was apparently to correct this restrictive interpretation. While some fault must be present, it is sufficient that the acts were intended, the consequences were reasonably foreseeable, and that such acts have a serious effect on the employee's job or the employer's interests.]~~

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving a discharge due to unsatisfactory work performance, it must be shown that the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

R994-405-203. Burden of Proof.

~~[(+)]In a discharge, the employer initiates the separation, and therefore, [and is the primary source of information with regard to the reasons for the dismissal. The employer] has the burden [of proof] to prove [which is the responsibility to establish the facts resulting in the discharge] there was just cause for discharging the claimant. [The employer is required by Section 35A-4-313 to keep accurate records and to provide correct information to the Department for proper administration of the Act. Although the employer has the burden to establish just cause for the discharge, if sufficient facts are obtained from the claimant, a decision will be made based on the information available.] The failure of one party to provide information does not necessarily result in a ruling favorable to the other party. Interested parties have the right to rebut information contrary to their interests.~~

~~[(2) All interested parties have the right to give rebuttal to information contrary to the interests of that party.]~~

R994-405-204. Quit or Discharge.

~~[The determination of whether a separation is a quit or a discharge is made by the Department based on the circumstances which resulted in the separation.] The circumstances of the separation as found by the Department, determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice or the claimant's report are not controlling on the Department.~~

(1) Discharge Before Effective Date of Resignation.(a) Discharge.

[When] If an individual notifies [an] the employer [that he intends] of an intent to leave work on [as of] a definite date, [in the future and is discharged] but is separated prior to that date, the [cause] reason [for] the separation [on the day the separation takes place is] took place on the date that it did, is the controlling factor in determining whether [it was] the separation is a quit or discharge. [Although the separation might have been motivated by the claimant's announced resignation, the employer was the moving party in ending the employment prior to the resignation date. Therefore, the immediate reason was more closely related to the employer's action than to the claimant's announced intention to quit.

~~Unless disqualifying conduct is involved, the separation is considered to be for the convenience of the employer. If the employer does not pay regular wages through the period of the notice but merely pays vacation pay which was not previously assigned to the period of the notice, the separation is still the result of a discharge which occurs prior to the date the worker planned to quit. The assignment of vacation pay to the period of time between the notice of intended resignation and the last date the employee planned work does not change the character of the separation.] If the decision to separate the worker is a result of the announced resignation to be effective at a future date, the separation is a discharge. Unless there is some other evidence of disqualifying conduct, benefits shall be awarded.~~

(b) Quit.

~~[If an employee announces a future date of resignation and is relieved of work responsibilities but is paid regular wages through the date of his announced resignation, it is not a discharge, but a quit.] If a worker gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the worker was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a worker announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. If a worker resigns, later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.~~

(2) Leaving in Anticipation of Discharge.

~~[When] If an [employee] individual leaves work in anticipation of a possible discharge [or layoff], and if the reason for the discharge would not [be] have been disqualifying, the separation is [generally considered to be] a [voluntary] quit. However, an individual [who leaves work to avoid virtually certain discharge for disqualifying conduct cannot thereby avoid the disqualifying provisions of Subsection 35A-4-405(2)(a) and the separation is considered a discharge rather than voluntary leaving.] may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation shall be considered a discharge.~~

~~(3) [Employee Knows His Action will Result in Discharge.] Refusal to Follow Instructions (Constructive Abandonment).~~

~~[Absence taken without permission, or other actions contrary to specific reasonable instructions from the employer, are generally considered a voluntary separation rather than discharge, if the worker was given a choice of complying or being separated.] If the worker refused or failed to follow reasonable requests or instructions, knowing the loss of employment would result, the separation is a quit.~~

R994-405-205. Disciplinary Suspension [or Involuntary Furlough]. When an [employee] individual is [put] placed on a disciplinary suspension [or involuntary furlough], [he may meet

[the definition of being ^["]unemployed^["] may be satisfied. If [the claimant]an individual files during the suspension [or furlough]period, the [reason for the suspension or furlough must]matter shall be adjudicated as a discharge, even though the claimant [is still attached]may have an attachment to the employer and may expect[s] to return to work. A suspension [which]that [was]is reasonable and necessary to prevent potential harm to the employer [or to maintain necessary discipline would]will generally result in a disqualification [under this section provided]if the elements of [control and]knowledge and control are [present]established. [Failure]If the individual fails to return to work at the end of the [definite period of]suspension period, [or furlough would be considered]the separation is a voluntary quit and [eligibility would then be determined consistent with Subsection 35A-4-405(1), if the claimant had not been previously]may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

R994-405-206. Proximal Cause - Relation of the Offense[s] to the Discharge.

(1) The cause for discharge is [that]the conduct [which]that [motivates]motivated the employer to make the decision to [terminate the employee's services]discharge the worker. If [the]a separation decision has [truly]been made, it is generally demonstrated by [way of]giving notice to the [employee]worker, [or the initiation of a personnel action.] Although the employer may learn of other offenses following [the making of]the decision to terminate the worker's services, the reason for the discharge is limited to [that]the conduct [of which]the employer was aware of prior to making the separation decision. [However, i]f [the]an employer [discharges]discharged [a person]an individual because of [some]preliminary evidence, [of certain conduct,]but [does]did not obtain [all of the]"proof" of the conduct until after the separation notice [is]was given, it [could]may still be concluded [that]the discharge was caused by [that]the conduct [which]the employer was investigating. [Eligibility for benefits will then be determined by considering the extent of culpability, knowledge and control.]

(2) [When]If the discharge [does]did not occur immediately after the employer [becomes]became aware of an offense, a presumption arises that there were other reasons for the discharge. [This]The relationship between the offense and the discharge must be established both as to cause and time. The presumption that [the conduct]a particular offense was not the cause of the discharge may be overcome by [a]showing [that]the delay was [due to]actions taken as a result of the incident including investigations, arbitrations, or hearings conducted with regard [necessary to accommodate further investigation, arbitration or hearings related to the worker's conduct. [When]If an individual files for benefits while a grievance or arbitration process is pending [with respect to the discharge], the [Department's decision will be]Department shall make a decision based on the best information available [to the Department]. The Department's decision is not binding on the grievance [resolution]process [or an arbitrator and]nor is the decision of [the]an arbitrator [is not]binding upon[on] the Department. [When]If an employer [is faced with the necessity of a reduction in his]elects to reduce its work force [but]and uses [an employee's]a worker's prior conduct as the criteria for determining who will be laid off, the [lack of work is the primary motivation or

cause of the discharge, not the conduct]separation is a reduction of force.

R994-405-207. In Connection with Employment.

Disqualifying conduct is not limited to offenses [which]that take place on the employer's premises or during business hours. However, [F]it is [only]necessary that the [conduct have such "connection"]offense be connected to the [employee's duties and to the employer's business]employment in such a manner that it is a subject of legitimate and significant concern to the employer. [All employers, both public and private]Employers generally have the right to expect that employees [to]shall refrain from acts [which are]detrimental to the business or that would bring dishonor [on]to the business name or [the]institution. Legitimate interests of employers include: goodwill [of customers, reputation of the business], efficiency, [business costs, morale of employees,]employee morale, discipline, honesty[;] and trust [and loyalty].

R994-405-208. Examples of Reasons for Discharge.

In [all]the following examples, the basic elements of just cause must be considered in determining eligibility for benefits. [The following examples do not include all reasons for discharge.]

(1) Violation of Company Rules.

If an [employee violates]individual violates a reasonable employment rule[rules of the employer] and the three elements of culpability knowledge and control are [established]satisfied, benefits [must]shall be denied.

(a) [The reasonableness of the employer's rules will depend on the necessity for that rule as it affects the employer's interests. Rules which are contrary to general public policy or which infringe upon the recognized rights and privileges of individuals may not be reasonable. An employer must have broader prerogatives in regulating conduct when employees are on the job than when they are not. An employer must be able to make rules for employee on-the-job conduct that reasonably further the legitimate business interests of the employer. An employer is not required to impose only minimum standards, but there may be some justifiable cause for violations of rules that are unreasonable or unduly harsh, rigorous or exacting. When rules are changed, adequate notice and reasonable opportunity to comply must be afforded. If the employee believes a rule is unreasonable, he has the responsibility to discuss his concerns with the employer and give the employer an opportunity to take corrective action.]An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a worker believes a rule is unreasonable, the worker generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) [Discharges may be regulated by an employment contract or collective bargaining agreement. Just cause for the discharge is not established if the employee's conduct was consistent with his rights under a contract or the discharge was contrary to the provisions of the contract.]If an employment relationship is

governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying conduct if [it is found that] the acts [was] were condoned by the employer or [was] were so prevalent as to be customary. However, [when the] if a worker [is] was given notice [that] the conduct [with] would no longer be tolerated, further violations [could] may result in a denial of benefits.

(d) Culpability may be established [even] if [the result of] the violation of the rule [does] did not, in and of itself, cause harm to the employer, but the [resultant] lack of compliance [with rules diminishes] diminished the employer's ability to [have order and control. Culpability is established if termination of the employee was required to] maintain necessary discipline [in the company].

(e) [Knowledge of the employer's standards of behavior is usually provided in the form of verbal instructions, written rules or warnings. However, the warning is not always necessary for a disqualification to apply in cases of violations of a serious nature of universal standards of conduct of which the claimant should have been aware without being warned.] Serious violations of universal standards of conduct may not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) [It is the duty of the worker to be punctual and remain at work within the reasonable requirements of the employer. Discharge for unjustified absence or tardiness is considered disqualifying if the worker knows that he is violating attendance rules. Attendance violations are generally a serious matter of concern to employers as attendance standards are necessary to maintain order, control, and productivity.] Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a worker to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the worker knew enforced attendance rules were being violated. A [D] discharge for an attendance violation beyond the control of the worker is generally not disqualifying unless the worker [reasonably] could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of [termination] discharge for violations of attendance standards, the [employee's] worker's recent [history of] attendance history [shall] must be [considered] reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence[s] within the worker's control [of the employee]. The [F] flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident [was] is beyond the [employee's] worker's control.

(3) Falsification of Work Record.

(a) [The duty of honesty is inherent in any [employee/employer] employment relationship. [A statement made in an application for a job may be considered as connected with the work, even though it is made before the work begins. An individual begins his obligations as an employee when he makes an application for work. One of those obligations is to give the employer truthful answers to all material questions. Any falsification of information which may operate to expose the employer to possible loss, litigation, or damage would be considered material and therefore may establish culpability. If the

claimant made a false statement while applying for work in order to be hired, benefits may be denied even if the claimant would have otherwise remained unemployed and eligible for the receipt of unemployment benefits depending upon the degree of knowledge, culpability and control.] An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied even if the claimant would not have been hired if all questions were answered truthfully.

(4) Insubordination.

[Authority is required in the work place to maintain order and efficiency.] An employer generally has the right to expect [that] lines of authority will be [maintained] followed; [that] reasonable [orders] instructions, given in a civil manner, will be obeyed; [that] supervisors will be respected and [that] their authority will not be undermined. In determining when insubordination [or resistance to authority] becomes disqualifying conduct, [the fact that there was] a disregard of the employer's rightful and legitimate interests is [the] of major importance. [Mere protests] Protesting or expressing general dissatisfaction without an overt act is not [in] a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may [be] constitute insubordination if it [is conducive to disruption of routine, negation of authority and impairment of efficiency.] disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by [an employee] a worker, [who was] acting in good faith, is not disqualifying conduct.

(5) Loss of License.

[When an employee loses a license which he knows is required for the performance of the job, and the individual had control over the circumstances which resulted in the loss of the license, the conduct is disqualifying. For example, if the claimant worked as a driver, and lost his license because of a conviction for driving under the influence (DUI), culpability is established if he fails to obtain a permit to drive at work or the conviction would expose the employer to additional liabilities. The employer cannot authorize an employee to drive in violation of the law. Also, additional insurance costs or other liabilities are a legitimate concern of the employer.] If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), [K] knowledge is established [because it is a matter of common knowledge in the State of Utah] as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and [is] may be punishable by the loss of [the individual's] driving privileges. [Judicial notice can be taken of this fact because a question relative to this matter is on every driver's license test. He had control in that he] Control is established as the claimant made a [conscious] decision to risk the loss of [the] his or her license by failing [when he failed] to make other arrangements for transportation, [prior to becoming under the influence of intoxicants.]

(6) Incarceration.

When an individual engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time, exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct, is disqualifying.

(7)(~~(6)~~) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined ~~that~~ the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive ~~work place~~ workplace. In balancing the interests of employees, employers and the general welfare ~~of the general public~~, the Legislature has ~~found that~~ determined the fair and equitable testing for drug[s] and alcohol use ~~in the work place~~ is ~~in the interest of all parties~~ a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

~~(1)~~(i) A written policy on drug or alcohol testing ~~which is~~ consistent with the requirements of the Drug and Alcohol Testing Act and which was in place at the time the violation occurred.

~~(2)~~(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in ~~termination~~ discharge.

~~(3)~~(iii) Proof of testing procedures used which would include:

~~(a)~~(A) Documentation of sample collection, storage and transportation procedures.

~~(b)~~(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by ~~gas chromatography, gas chromatography-mass spectroscopy or other comparably~~ reliable testing ~~analytical~~ methods.

~~(c)~~(C) A copy of the verified or confirmed positive drug ~~test report~~ or alcohol test report.

~~(c)~~(c) The above documentation ~~will~~ shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result ~~will~~ shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant ~~works~~ worked in an occupation governed by a state or federal law ~~which~~ that ~~allows~~ allowed or ~~requires~~ required discharge ~~termination from employment~~ at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample ~~indicates~~ is a violation of a reasonable employer rule, ~~for which~~ The claimant may be disqualified from the receipt of ~~unemployment~~ benefits; ~~provided that~~ if ~~the employee's termination~~ his separation was consistent with the employer's written drug and alcohol ~~testing~~ policy.

(f) In addition to the drug and alcohol testing provisions above, ~~a prima facie case of~~ ineligibility for benefits under the

Employment Security Act may be established through the introduction of other competent evidence.

R994-405-209. Effective Date of Disqualification.

The Act provides ~~that~~ any disqualification under Subsection 35A-4-405(2) ~~will~~ shall include "the week in which the claimant was discharged . . ." However, to avoid confusion, the denial of benefits ~~will~~ shall begin with the Sunday of the week ~~for which~~ the claimant ~~has~~ filed for benefits. Disqualifications assessed in a prior benefit year shall continue into the new benefit year until purged by sufficient wages earned in subsequent bona fide covered employment.

KEY: unemployment compensation, employment, employee's rights, employee termination

~~July 1, 1997~~ February 17, 1999

~~35A-4-501(1)(b)~~

~~35A-4-502(1)(b)~~

~~35A-1-104(4)~~

~~35A-4-405~~



Workforce Services , Workforce Information and Payment Services

R994-405

Ineligibility for Benefits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21748

FILED: 12/16/1998, 17:49

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The main purpose is to simplify, clarify, and consolidate the language of the rule to make it easier to understand and use.

SUMMARY OF THE RULE OR CHANGE: The changes are nonsubstantive. An amendment was filed because the changes are extensive. These amendments affect only sections R994-405-301 through R994-405-314 regarding suitable work. Subsections have been renumbered to conform to the Division of Administrative Rules (DAR) system and correct errors. The list of considerations in Section R994-405-309 has been reorganized to properly correspond with the paragraphs explaining each consideration later in the rule. The provisions regarding "Domestic Circumstances" have been consolidated with "Personal Circumstances." Much of the current rule has been deleted and replaced with more concise language.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(1), 35A-4-502(1)(b), and 35A-4-405(3)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: These changes do not affect the current application of the rule and, therefore, will have no financial effect, either positive or negative, on the state budget.

❖LOCAL GOVERNMENTS: These changes do not affect the current application of the rule and, therefore, will have no financial effect, either positive or negative, on local government budgets.

❖OTHER PERSONS: These changes do not affect the current application of the rule and, therefore, will have no financial effect, either positive or negative, on claimants or employers.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments do not require any action by any person and do not change the current application of the rules. Therefore, there would be no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments do not change the current application of the rule and would have no effect on either contributing or reimbursable employers.

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

Workforce Services
Workforce Information and Payment Services
Fourth Floor
140 East 300 South
PO Box 45277
Salt Lake City, UT 84145-0277 , or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Christopher Love at the above address, by phone at (801) 526-9291, by FAX at (801) 526-9394, or by Internet E-mail at wsadmpo.cllove@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Robert C. Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-405. Ineligibility for Benefits.

R994-405-301. Failure to Apply for or Accept Suitable Work - General Definition.

(1) The primary obligation of ~~the~~a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available the claimant has an obligation to properly apply for~~[make application]~~ and accept ~~[such] offered~~ work. ~~[If a claimant fails without good cause to obtain suitable employment, he then becomes responsible~~

~~for his subsequent unemployment and he is no longer eligible for unemployment insurance benefits.]~~

R994-405-302. Necessary Elements~~[Necessary for an Issue]~~.

~~[Before an issue arises]~~To assess a disqualification under this section of the statute, [all of] the following elements must be established:

(1) Availability of a Job.

There must be an actual job opening ~~[which] that~~ the claimant could reasonably ~~[be]~~expect[ed] to obtain. ~~[because his qualifications and abilities.]~~

(2) Knowledge.

The claimant must have the opportunity to be informed about ~~[the availability and nature of] the job including [information about] the wage, type of work, hours, general location and conditions of the job. The claimant must [know that he] understand a referral for work is being offered [a referral and not merely engaging in] as opposed to a general discussion of job possibilities or labor market conditions. If [When] a job offer is [being] made, it [should] must be clearly communicated as an offer of work, [and not merely a general discussion of job possibilities.]~~

(3) Control.

The failure of the claimant to obtain the employment must be the result of ~~[either] the claimant's:~~

- (a) failure to accept a referral, or
- (b) failure to properly apply for work, or
- (c) failure to accept work when offered.

R994-405-303. Provisions for Allowance of Benefits After an Issue is Found to Exist.

Unemployment insurance benefits ~~[must be allowed] shall not be denied under Subsection 35A-4-405(3) if [the claimant can show any one of the following circumstances] any of the following circumstances exist:~~

(1) The job is not suitable, or

(2) ~~[He]~~The claimant had good cause for ~~[his] the~~ failure to apply for or accept~~[obtain]~~ the job, or

(3) A disqualification would be contrary to equity and good conscience.

R994-405-304. Failure to Accept a Referral.

(1) Definition of a Referral.

~~[When the]~~If a claimant is told by a Workforce Services representative about the requirements of a job and ~~he~~is given an opportunity to accept or reject the opportunity to apply for the job, ~~he~~the claimant has been offered a referral.

(2) Refusal of a Referral.

~~[The]~~A claimant fails to accept ~~the~~a referral when he or she~~[either specifically]~~ refuses to contact the employer or ~~[he]~~ responds in a ~~[sufficiently] negative manner, [that he prevents or discourages] which prevents or discourages the interviewer from providing [him with the name and address of the employer] the necessary referral information.~~

(3) Failure to Respond to a Notice from Workforce Services.

Failing to respond to a notice to contact Workforce Services for the purpose of being referred to a specific job is the same as refusing a referral ~~[to]~~for possible employment. If there was a

suitable job opening to which ~~he~~the claimant would have been referred, benefits ~~must~~shall be denied unless ~~he can show~~ good cause is established for not responding as directed, or that the elements of equity and good conscience are established. ~~[If the claimant can show that he did not receive the call-in notice, good cause for failure to respond is established.]~~Good cause, as it applies to Subsection 35A-4-405(3), shall generally be established if it can be shown the claimant was prevented, due to circumstances beyond the claimant's immediate control, from responding as directed. However, a card properly addressed and properly mailed is presumed to be delivered unless returned by the Postal Service to the sender.

R994-405-305. Proper Application.

~~[A worker is considered to have properly applied if he]~~A proper application for work is established if the claimant does those things~~[that are]~~ normally done by applicants who are seriously and actively seeking work,~~[by emphasizing his sincere interest in the job and conducting himself so as to provide the maximum possibility of his becoming employed. He does this by:]~~ Generally, the claimant must:

(1) ~~[Presenting himself to]~~meet with the employer at the designated time and place,~~[and consistent with instructions or customary practices;]~~

(2) ~~[R]eport[ing]~~ to the employer dressed and groomed in a manner appropriate for the type ~~[for work he is seeking,]~~of work being sought, and

(3) ~~[D]emonstrating~~present no unreasonable conditions or restrictions on acceptance of the available work,~~[available or the conditions under which he will accept employment.]~~

R994-405-306. Failure to Accept an Offer of Work.

An offer of work may be refused by positive language, or ~~[it may be refused]~~by conduct ~~[which]~~that ~~[a reasonable person could anticipate]~~would prevent or discourage~~[the employer from making]~~ an offer of ~~[employment]~~work. ~~[A claimant refuses work when he]~~Work is refused when the claimant unnecessarily emphasizes barriers to ~~[acceptance of]~~accepting employment.~~[The employer will be an interested party entitled to notice of the Department's decision on the claimant's eligibility for benefits following a refusal of work.]~~

R994-405-307. Good Cause.

Good cause for ~~[failure to obtain an]~~failing to accept available ~~[job]work~~ is established if the ~~[job]work~~ is not suitable ~~[to the claimant]~~or ~~[acceptance of]~~accepting the job would cause ~~[a]~~hardship~~[on the claimant.]~~ Hardship ~~[is]~~may not be established unless ~~[acceptance of]~~accepting the employment would ~~[cause]~~result in actual or potential physical, mental, economic, personal or professional harm. Good cause for not ~~[obtaining the]~~accepting a job is also established if the elements ~~[which]~~that establish good cause for quitting a job are present under Subsection 35A-4-405(1) and Section R994-405-102.

R994-405-308. Equity and Good Conscience.

A claimant ~~[will]~~shall not be denied benefits for failing to ~~[obtain employment]~~apply for or accept work if a disqualification would be contrary to ~~[a]~~equity and good conscience~~[a]~~, even though ~~[a]~~good cause~~[a]~~ ~~[does not exist]~~has not been established. The

~~[three]~~elements necessary to establish eligibility under the equity and good conscience standard are:

~~[—]~~(1) The Purpose of the Act.

~~The purpose of the Act is to assist eligible workers, when suitable work is not available, to provide continued purchasing power and stability to the economy.]~~

~~[(2)]~~(1) Reasonableness~~[of the Claimant's Action].~~

Reasonableness ~~[of the claimant's actions in failing to obtain work is]~~may be established if the claimant is not overly sensitive in determining the suitability of the work and there ~~[was]~~is some justification or evidence of mitigating circumstances ~~[for his]~~that resulted in the failure to apply for or accept~~[obtain]~~ employment. A mitigating circumstance is one ~~[which]~~that may not be sufficiently compelling to ~~[be considered]~~establish good cause, but ~~[one which]~~would motivate a reasonable person to take similar action~~[s]~~.

~~[(3)]~~(2) Continuing Attachment to the Labor ~~[Force]~~Market.

The claimant ~~[shows]~~must show evidence of a genuine and continuing attachment to the labor ~~[force]~~market by making an active and consistent effort to become re~~[=]~~employed. ~~[He has]~~The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts~~[he is making contacts with employers]~~ prior to, during and after the week ~~[during which he failed to obtain]~~the job in question was available.~~[The contacts must be made in such a manner that he has a reasonable opportunity of securing employment.]~~

R994-405-309. Suitability of Work.

~~[The unemployment insurance program was never intended to guarantee anyone a job identical in kind and hours with his previous job. A claimant has the right to seek a job similar to past employment if his prospects of locating such work are reasonable.]~~The following elements must be considered in determining~~[determine]~~ the suitability of employment: (1) ~~[degree of]~~risk to health and safety, (2) ~~[violation of moral standards]~~religious or moral convictions, (3) physical fitness, (4) prior ~~[training]~~experience, (5) prior training, (6) prior earnings, ~~[and wages for similar work in the locality, (6)]~~(7) length of unemployment, ~~[(7)]~~(8) prospects for securing work in ~~[his]~~customary occupation, ~~[(8)]~~(9) distance of the available work from his residence, ~~[(9)]~~(10) working conditions. A suitable job shall include[s] work ~~[which]~~the claimant has done before ~~[using the claimant's]~~which would utilize prior knowledge and training or work in an occupation to which the claimant's skills are adaptable. ~~[When there is little or no demand in the claimant's customary occupation, he is expected to shift to work which is related to his skills and in which he has a reasonable prospect of obtaining employment. Work which violates any state or federal labor law or is vacant due to a labor dispute will not be considered suitable work and therefore a claimant would not be denied benefits for failing to obtain that work.]~~Work that requires illegal activities, that violates state or federal labor laws, or that is vacant due to a labor dispute, shall not be considered suitable.

(1) ~~[Degree of]~~Risk to Health and Safety.

~~[A job is suitable when it does not present a genuine risk to the claimant's physical or mental health which is greater than the usual or customary risks in that occupation; when a claimant has not developed a real fear after a bad accident; or the employment would not cause physical discomfort, bodily harm or mental stress which~~

would normally require medical attention, or severe hardship. A claimant has good cause for refusing work which would require him to do things against medical advice that would aggravate or cause health problems. When employment presents a genuine risk to the claimant's health or physical condition, all other factors which determine suitability are overcome. Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(2) [Violations of Religious or Moral Convictions. Standards.]

The work must [truly] conflict with [good faith,] honestly held religious or moral convictions before a conscientious objection[s establish good cause for failure to obtain employment] could support a conclusion that the work was not suitable. This does not mean [that any] all personal beliefs[, no matter how unique, is] are entitled to [this] protection. However, beliefs need not be acceptable, logical, consistent or comprehensible to others, or shared with members of a religious or [morally orientated] other organized group in order to show [that] the conviction is held in good faith. [Where an individual is not called upon, as a condition of employment, to violate his religious or moral convictions, the job is suitable.]

(3) Physical Fitness.

[Physical fitness means that t] The claimant must possess the physical capacity to perform the work. [A claimant is presumed able to perform work consistent with prior working conditions unless the claimant has experienced a loss of agility or ability which prevents him from performing such work or avoiding previously accepted hazards. If the claimant has physical limitations which would impose a burden on the claimant that is not shared by other workers, good cause for not obtaining the work is established.] Employment beyond the physical capacity of the claimant is not suitable.

(4) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A [-skilled] worker must be given a reasonable time to seek work [which] that will preserve his or her highest skills and earning potential. However, if [the] a claimant has no realistic expectation of obtaining employment in [the] an occupation [in which he developed] utilizing his or her highest skill[s] level, [he must be willing to make necessary adjustments to accept work in other occupations] work in related occupations becomes suitable. [When a claimant's skills are slight or when economic conditions dictate that a return to usual occupations are unlikely, it is reasonable to expect changes commensurate with existing conditions. Where a claimant's usual work exists only during certain times of the year and it is impossible to find work in his usual occupation, he must be willing to accept work outside his usual occupation in order to be considered in the work force, and eligible for benefits.

(a) At the time of filing an initial claim or reopening a claim following employment at the highest skill level, the claimant has good cause for refusing employment which after an initial training or orientation period with the new employer cannot be expected to utilize his highest skills.]

[(b)](a) After [the] a claimant has filed continuously for 1/3 of the weeks of [his] entitlement, any job [which is] similar to work performed during the base period of the claim is [considered] suitable even though it [does] may not utilize the claimant's highest skill[s] level.

[(c)](b) After [the] a claimant has filed continuously for 2/3 of the weeks of [his] entitlement, [work in other occupations that the claimant is reasonably fitted to perform by past experience or training or to which his skills could logically be transferred will be considered suitable.] any work the claimant could reasonably expect to perform based on the claimant's skills, training, and recent employment history becomes suitable.

(5) Prior Training.

[If the claimant has training which would qualify him to perform a particular type of work, but he has no experience in that work, it is reasonable that he would desire to seek work at his highest skill level. However, a claimant must be willing to accept the type of work performed during the base period of his claim unless he can show some compelling reason why he can no longer work in his prior occupations. If the claimant has training which would qualify him for work that he has not previously performed, that work may also be considered.] The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department Approval, or the training was subsidized by another government program.

(6) Prior Earnings.

Work is not suitable if the wage is substantially less favorable to the individual than [wages prevailing] the prevailing wage for similar work in the [locality] area, or if it is less than the state or federal minimum wage. The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors [used to determine the suitability of the wage] in determining whether the wage is suitable. If a claimant's former [rate] wage was earned in another area [locality], the prevailing wage [rate] is determined by the new area [locality]. [A claimant must be willing to accept less than the highest former wage if he does not have a reasonable and immediate expectation of being able to obtain work at the higher rate.] For the purposes of this subsection, the term "prevailing wage" means the market rate.

(a) At the time of filing an initial claim, work paying less than the highest wage earned by the claimant during [the] his base period [of his claim] or the highest wage for that occupation paid in the [locality] area, whichever is lower, [may not be considered] is not suitable unless the claimant has no real expectation of being able to find work at that wage. [However, a] After four weeks of continuous filing, a Department [R] representative may advise the claimant that a job paying any wage earned [by the claimant] during [his] the base period is suitable, if the highest wage earned during the base period is not reasonably available.

(b) [When the] After a claimant has been filing continuously for a period of time equal to 1/3 of [his] the maximum number of weeks of entitlement, any work [offering] paying a wage earned [by the claimant] during [his] the base period is suitable.

(c) After filing continuously for 1/2 of ~~[his]the~~ weeks of entitlement, work ~~[offering]paying~~ a wage ~~[which is]10%~~ less than the lowest wage earned by the claimant during the base period ~~[of his claim is]becomes~~ suitable if this wage is higher than the prevailing wage for that occupation. After filing continuously ~~[B]between 1/2 and 2/3 of the claimant's weeks of entitlement, [the wage which is considered suitable for]a~~ claimant must gradually reduce[s] the wage demanded until it reaches the prevailing local wage for work in that occupation, ~~[which is paid in the locality.]~~

~~[(d) After filing continuously for 2/3 of his weeks of entitlement, work paying the prevailing wage for work in the claimant's occupation in the locality is suitable.]~~

~~[(e) When a claimant reopens a claim after employment, the wage paid on the last job must be considered a suitable wage. Thereafter, additional reductions in the suitable wage would be determined by the number of weeks of continuous filing after reopening the claim.]~~

(7) Length of Unemployment.

~~[The suitability of a job]Whether a job is suitable~~ depends on the length of time the claimant has been unemployed. A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of ~~[his]obtaining [such]that type of work. [What constitutes a reasonable period of time is dependent on the circumstances of each claimant and the changing conditions in the industry.]However, [A]as~~ the length of unemployment increases the claimant's demands ~~[regarding]with respect to~~ earnings, ~~[experience.]working conditions, job duties~~ and the use of prior training must be ~~[increasingly]systematically~~ reduced unless the claimant has immediate prospects of reemployment.

(8) Prospects of Securing Work In Customary Occupation.

(a) Customary work ~~[includes any jobs which are]is work~~ similar to the work performed ~~[by the claimant]during [his base period and in]the claimant's recent employment history.[years. However, if there are substantial differences between an available job within a customary occupation and the claimant's past employment, the job would not be considered customary work for that claimant.]~~ The Department may not require a modification of the claimant's employment restrictions and wage requirements if it can be shown:

(i) the length of unemployment is less than the time normally required to obtain employment in the claimant's customary occupation, and

(ii) there are reasonable prospects for work in that occupation.

(b) A refusal of work shall not result in a denial of benefits if the claimant has obtained a definite date to begin full-time, permanent employment elsewhere within three weeks.

~~[(b) Definite and Immediate Prospects:~~

~~— A claimant has good cause of failing to obtain work that is less suitable if he has a definite date of hire for other full-time employment to begin within three weeks.~~

~~[(c) Labor Market Prospects:~~

~~— The claimant is not required to modify restrictions he places on the suitability of the employment he is willing to accept if he can show:~~

~~— (1) there are good opportunities for work consistent with his restrictions, and~~

~~— (2) the length of time the claimant has been unemployed is less than the time normally required to obtain employment in his customary occupation.]~~

(9) Distance of the Available Work from the Claimant's ~~[His] Residence.~~

~~[(a) Suitability of Commuting Distance:~~

~~— Work is suitable if the commuting distance from the claimant's residence to the job is within customary commuting patterns for the occupation and the locality. The claimant does not have good cause for failure to obtain suitable work because of his failure to provide transportation within customary commuting patterns. Public transportation should be utilized when it is available and the claimant does not have other means of commuting to work.]To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide transportation within the normal or customary commuting pattern in the area or the failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work.~~

~~[(b) Suitability of Work Beyond Commuting Distance:~~

~~— A claimant is not required to accept employment which]Work is not suitable if accepting the employment would require a move from [his]the current area of residence unless that is a usual practice in the occupation. [Factors which lessen the suitability of work located outside the locality of the claimant's residence include: short duration of the work, good prospects for equally steady employment in the area of the claimant's residence, a relatively short length of his unemployment, a wage which does not justify relocation, excessive distance to the work, the lack of available and suitable housing in the new locality.]~~

(10) Working Conditions.

Working conditions refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work.

(a) Prevailing Conditions.

~~[If the hours, wages and other conditions of new work are in violation of the State or Federal laws, the work is unsuitable.]If the working conditions are substantially less favorable than those prevailing for similar work in the area[locality], the work is not suitable.[unsuitable and refusal of the work is with good cause.]~~ The purpose of these conditions is to prevent the unemployment compensation system from exerting downward pressure on existing labor standards. It is not intended to increase wages or improve working conditions, but to prevent any compulsion upon workers, through denial of benefits, to accept work under less favorable conditions than those generally to be obtained in the ~~[locality]area~~ for similar work.

(b) Similar Work.

The phrase "similar work" used in the statute does not mean "identical work." Similar work is work in the same occupation or ~~[work which uses]a different occupation which requires essentially the same skills. [Similarity is indicated by Employment Service code classifications, wage classifications or broad colloquial classifications. Jobs included in these broad classifications have characteristics that make them similar and consideration of these characteristics may be necessary in borderline cases. For example, the broad classification of sales work involves many varieties of products, methods, clientele, different wages, industries, that are important to a claimant. Although selling ladies' hosiery may be~~

"similar" to selling mining equipment because both involve persuading customers to buy, the characteristics of the two jobs are not substantially similar.]

(c) Prevailing Wage.

[The Act does not define the word "prevailing." In relation to wages, the term is interpreted to mean "market" rate. Prevailing conditions are those conditions which are characteristic of] For the purposes of this subsection, the term "prevailing wage" means the market rate for the occupation in the area[locality].

[(d) Conditions of Work:

—The phrase "conditions of work" refers to the provisions of the employment agreement whether express or implied and the physical conditions of the work. Some of the more common provisions are sick and annual leave, holidays, pensions, seniority, grievance procedures, work rules and safety rules.]

[(e)](d) Hours of Work.

Claimants are expected to make themselves available for work during the usual[customary or prevailing] hours [of]for similar work in the [locality]area. [When]If work periods are in violation of the law or [when]if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, [F]the [conditions under which]hours the claimant worked [in the past]during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere[in] convenience [including early rising, late retiring, or transportation]is not good cause for failure to [obtain]accept otherwise suitable employment.

[(f)](e) [Vacant due to Labor Negotiations or A Violation of Labor Law:]Labor Disputes or Law Violations.

[New w]Work is not suitable if the [position offered is]working conditions are in violation of any [S]state [of]or [F]federal law [including labor laws], or the [vacancy]job opening is due [directly]to a strike, lockout or labor dispute. If a claimant was laid off or furloughed prior to the dispute, and an offer of employment is made after the dispute begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-310. Examples.

(1) Attendance at School or Training Course.

—All students are expected to obtain suitable full-time work except when attending a course with the Department Approval. All claimants without Department Approval must accept suitable work even if it would interfere with school or training. Work is not less suitable because it conflicts with schooling.]

Claimants are expected to seek and accept suitable full-time work even if it would interfere with school or training. Claimants attending school full-time with Department Approval are not required to seek work.

(2) [Domestic]Personal Circumstances.

—(a) Domestic Needs:

A claimant may have good cause for failing to obtain employment due to personal[domestic] circumstances if acceptance of the employment would cause a substantial hardship[on the claimant] provided there are no reasonable alternatives.[, for example, transferring the domestic responsibilities to other family members or to hired help. Disruptions of home and family life that

are a normal consequence of working are not sufficient to establish good cause for failing to obtain suitable employment.] However, if a personal[domestic] circumstance[s]precludes] prevents the acceptance of suitable employment, there is a presumption [that]the claimant is not available for work.

—(b) Claimants with Dependents:

—Claimants with young children, aged or ailing family members to care for may have good cause for failing to obtain employment when such employment would render care impossible. A person with such genuine domestic responsibilities, not mere inconvenience may be allowed a reasonable period of time to find work which would allow domestic responsibilities to be fulfilled. However, the claimant is not available for work unless there is a reasonable expectation that work is available consistent with his restrictions:

—(3) Personal Circumstances:

—(a) Customary Practices:

—Personal circumstances must be compelling before they constitute good cause for failure to obtain available, suitable employment. Consideration is given to customary practices of the claimant as well as reasonable alternatives available to overcome the particular type of personal circumstances which would enable him to accept the employment.

—(b) Personal Objections:

—Personal objections to the prospective employer or to prospective fellow employees are sometimes offered as excuses for failure to obtain otherwise suitable employment. Unless the circumstances would be especially oppressive in the claimant's case, employment is not regarded as unsuitable because of objections to working with particular individuals, other races or nationalities or because of unfounded rumors about the employer. Excuses and preferences without basis do not make work unsuitable or constitute good cause for failing to accept employment.]

[(4)](3) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history [is that]consists of part-time or temporary work, then any work that meets the Suitable Work Test, Section R994-405-309, [and is part-time or temporary would be deemed suitable:]would be considered suitable even if the work is part-time or temporary. [Even i]If the claimant [did not have]has no recent history of temporary or part-time work [during the base period, such work may be better than no work particularly if the claimant has been unemployed for a long time or]the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect[s] of full-time work.

R994-405-311. New Work.

(1) All work is performed under a contract of employment between a worker and [his]an employer whether written, oral or implied.[or verbal:] The contract [describes]addresses the job duties, [and the parties have agreed the worker is to perform, and]as well as the terms and conditions under which the work is to be performed. If the proposed duties, terms, or conditions of the work offered by an employer are not [covered by]part of an existing contract, the offer [constitutes]is for a new contract of employment and [is therefore]constitutes an offer of new work. The provisions of the Suitable Work Test, Section R994-405-309, apply to offers

of ~~["]~~new work~~["]~~. ~~[When an employee is asked to perform new or unusual duties which are customary in the occupation, although not specified as official job requirements, but do not cause loss of skills, wages or benefits the employment will not be considered new work.]~~ A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages or benefits, does not constitute an offer of new work, even if those duties are not specified as part of the official job requirements. It ~~[is]~~ may also be customary for workers to perform ~~[additional]~~ short term tasks involving different or new duties and when ~~[such]~~ those assignments do not replace the regular duties of ~~[that]~~ the worker, the contract of ~~[hire]~~ employment has not been changed.

(2) New Work is defined as:

(a) ~~[An offer of work to an unemployed individual]work offered by an employer [with whom he has never had a contract contact of employment.]for whom the individual has never worked;~~

(b) ~~[An offer of reemployment to an unemployed individual]reemployment offered by an employer [with whom he does not have a contract of employment]for whom the individual is not working at the time the offer is made, [even if]whether the conditions of employment are the same or different from [his]the previous job[-];~~

(c) ~~[An offer]work offered by an individual's present employer [of]involving duties, terms or conditions different from those [he has agreed to perform in his]agreed upon as part of the existing contract of employment.~~

R994-405-312. Burden of Proof.

(1) Before benefits ~~[are]~~ may be denied, the Department must show: ~~[that]~~ the job was available, ~~[that]~~ the claimant had an opportunity to ~~[know the circumstances of the job]learn about the conditions of employment,~~ ~~[that]~~ the claimant had an opportunity to apply for or accept the job, and ~~[that]~~ the claimant's action[s] or inaction ~~[caused his]resulted in the~~ failure to obtain the job. ~~[Since t]~~ The statute requires that the wage, hours and other conditions of the work [are]shall not be substantially less favorable to the individual than those prevailing for similar work in the [locality]area in order to be considered suitable work. ~~[t]~~ The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied.~~[denying benefits regardless of whether the claimant raises the issue.]~~

(2) When the Department has established the above elements, a disqualification must be assessed unless the claimant can establish that the work was not ~~[in fact]~~ suitable ~~[for him], that [he had]there was~~ good cause for failing to obtain the job, or that a disqualification would be against equity and good conscience.

R994-405-313. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) shall include[s] the week in which the claimant's action or inaction ~~[caused his]resulted in the~~ failure to obtain employment or the first week the work was available, whichever is later, ~~[and continuing-].~~ The disqualification shall continue until the claimant has performed services in bona fide covered employment and earned wages [of]equal to at least six times his or her weekly benefit amount. ~~[For example, if a claimant is offered a job one week but does not refuse it until the following week, that~~

disqualification would not begin until the week of the refusal. However, if the job was not to begin until sometime in the future, the disqualification would begin with the week during which the work was to begin:

~~— (2) A claimant may be denied benefits under this Subsection 35A-4-405(3) even though previously denied benefits under another section of the Act. For instance, a claimant who has been disqualified for voluntarily leaving his last job and then refused a referral to suitable work may be assessed an additional disqualification under Subsection 35A-4-405(3).]~~

~~[(3)](2)~~ A disqualification may be assessed if the claimant refused an offer of suitable work prior to the effective date of ~~[his]the~~ claim ~~[when]if~~ the refusal was directly related to the ~~[reason for the]claimant's~~ unemployment. For example: If the claimant's job is ~~[abolished]eliminated~~ or changed so substantially ~~[so]as to [be]constitute~~ ~~["]~~new work,~~["]~~ it would be considered that the claimant was laid off]the separation is a layoff. ~~[and a disqualification for quitting work would not be appropriate.]~~ However, if the ~~["]~~new work~~[-]~~ offered by the regular employer is suitable, ~~[and the individual refuses the offer of new work without good cause,]~~ a disqualification may be assessed in accordance with Subsection 35A-4-405(3) of the Act. ~~[Another example is the claimant who leaves one job to accept a definite and immediate offer of other work and therefore left with good cause, but afterward decides not to accept the other job. The failure to accept the offer of suitable work in this case would be disqualifying if the claimant did not have good cause, and the provisions of equity and good conscience do not apply.]~~

~~[(4)](3)~~ Disqualifications assessed in a ~~[previous]prior~~ benefit year ~~[with]shall~~ continue into the new benefit year until ~~[cleared]purged~~ by sufficient wages earned in subsequent bona fide covered employment.

R994-405-314. Notification.

In addition to notification to the claimant's most recent employer ~~[under]consistent with~~ Section 35A-4-401(6), all employers directly involved in a claimant's failure to ~~[obtain]properly apply for or accept~~ employment ~~[with]shall~~ be ~~[given a notice]notified~~ of the determination made under Subsection 35A-4-405(3) including applicable appeal rights. ~~[Any party entitled to this notice may file an appeal with an appeal referee within ten days after the date of mailing the notice.]~~

KEY: unemployment compensation, employment, employee's rights, employee termination

[July 1, 1997]February 17, 1999 **[35A-4-501(t)(b)]**
35A-4-502(1)(b)]
35A-1-104(4)
35A-4-405

◆ ◆

**Workforce Services , Workforce
Information and Payment Services**
R994-405
Ineligibility for Benefits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 21749

FILED: 12/16/1998, 17:49

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The main purpose of the majority of the changes is the clarification and simplification of the rule. The one substantive change prevents a claimant from experiencing a new disqualification period if he requests a new lower level hearing. See Subsection R994-405-503(4) and Subsections 35A-4-405(5)(a) and 35A-4-405(5)(b).

SUMMARY OF THE RULE OR CHANGE: These amendments affect only Sections R994-405-501 through R994-405-507, regarding unemployment fraud. The majority of the changes are nonsubstantive and are designed to clarify or simplify the rule. The one substantive change provides that a claimant who did not attend an original lower level fraud hearing, due to good cause, shall not be penalized for requesting a new hearing by having the disqualification period adjusted to begin the week of the new hearing. The disqualification period would remain the beginning of the week of the original decision.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-1-104(1), 35A-4-502(1)(b), and 35A-4-405(5)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated financial effects, costs or savings, due to either the nonsubstantive changes or the change in the beginning of the disqualification period.

❖LOCAL GOVERNMENTS: There are no anticipated financial effects, costs or savings, due to either the nonsubstantive changes or the change in the beginning of the disqualification period.

❖OTHER PERSONS: There are no anticipated financial effects, costs or savings, to either claimants or employers due to the nonsubstantive changes. Occasionally a claimant will become eligible for unemployment benefits after a fraud disqualification, on an earlier date than under the current rule because the disqualification date is now changed to the date of the new hearing. However, the claimant must still repay the overpayment and fraud monetary penalty in full before he is eligible for benefits. There would be no readily definable financial effect on employers due to this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs involved for any person due to the nonsubstantive changes or the occasional retention of an earlier disqualification period. Occasionally, a claimant will become eligible for benefits again after a fraud disqualification because the earlier beginning date of disqualification is retained.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business is foreseen based on the changes to this rule as

most of the amendments are nonsubstantive. The only major change allows a claimant to retain the original disqualification date set by the Department, if he exercises his right to request a new hearing. This would have no effect on employers.

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

Workforce Services
Workforce Information and Payment Services
Fourth Floor
140 East 300 South
PO Box 45277
Salt Lake City, UT 84145-0277 , or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Christopher Love at the above address, by phone at (801) 526-9291, by FAX at (801) 526-9394, or by Internet E-mail at wsadmpo.clove@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Robert C. Gross, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.**R994-405. Ineligibility for Benefits.****R994-405-501. Fraud - General Definition.**

The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. ~~[The Act provides severe penalties for fraud, but Subsection 35A-4-405(5) does]~~ Fraud penalties do not apply if the overpayment was the result of an inadvertent error. [There must be] Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits, [to which the claimant was not entitled for fraud to exist]. The absence of an admission or direct proof of intent to defraud does not prevent ~~[the conclusion that the claimant violated Subsection 35A-4-405(5)]~~ a finding of fraud.

R994-405-502. Elements of Fraud.

The elements necessary to establish an intentional misrepresentation, sufficient to constitute fraud are:

(1) Materiality.

~~[The element of m]~~ Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining waiting week credit or any benefit payment to which he is not entitled. Benefits received by fraud may include an amount as small as \$1 over the amount [the] a claimant was entitled to receive.

(2) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he failed to provide information required by the Department. He does

NOT have to know that the information will result in a denial of benefits or a reduction ~~of~~in the benefit amount. ~~[The element of~~ ~~κ]~~Knowledge is established when a claimant recklessly makes representations knowing he has insufficient information upon which to base such representations, ~~[either because he failed to read material provided by the Department or to inquire when he had a question about what information to report].~~ A claimant has an obligation to read material provided by the Department or to ask a Department representative when he has a question about what information to report.

(3) Willfulness.

A claimant must have made the false statement or deliberate omission for the purpose of obtaining benefits. ~~[The element of~~ ~~ω]~~Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates ~~[his]~~the responsibility to personally provide information or allows ~~[another person to]~~access to his or her Personal Identification Number (PIN) so that someone ~~else~~[other than himself] may file a telephone claim, ~~[he]~~the claimant is responsible for the information provided or omitted by the other person, even ~~[when he may not have had any]~~if the claimant had no advance knowledge that the information provided ~~was false or important information was omitted.~~[or omitted was false.]

R994-405-503. Evidence and Burden of Proof.

(1) Prior Knowledge of Ineligibility by the Department.

If the Department has ~~[evidence]~~sufficient evidence to assess a disqualification prior to ~~[the granting of]~~paying benefits, a fraud disqualification ~~[with]~~shall not be assessed even if the documents submitted by the claimant contain ~~[ed]~~ false statements or deliberate omissions. However, non-fraud overpayments may be established ~~[in accordance with the provisions of Subsections 35A-4-406(4)(b) or 35A-4-506(5)(a) as appropriate.]~~under the law regarding fault and non-fault overpayments in Subsections 35A-4-406(4)(b) and 35A-4-406(5)(a), respectively.

(2) Initial Burden of Proof.

Fraud ~~[cannot]~~may not be presumed whenever false information has been provided or material information omitted and benefits ~~[have been]~~overpaid. The Department has the burden of proof, which is the responsibility to establish ~~[in the record that]~~ all the elements of fraud, ~~[are present before a disqualification can be assessed.]~~

(3) Standard of Proof.

The ~~[existence of the]~~ elements of fraud must be established by a preponderance of the evidence, ~~[of the nature relied upon by reasonable individuals in the conduct of their affairs:]~~ There does not have to be an admission or direct proof of intent.

(4) Procedure.

A fraud disqualification will be assessed ~~[under Subsection 35A-4-405(5)]~~if [the]a claimant provides a sworn, written admission ~~[of all the elements of fraud. A sworn, written admission is one wherein the signer declares or certifies that he]~~certifying that material information was knowingly withheld or misrepresented to [material information to receive] obtain benefits, ~~[to which he was not entitled.]~~ In the absence of a sworn, written admission, ~~[the]a~~claimant is entitled to ~~[must be given an opportunity for]~~ a recorded hearing after ~~[he has been given]~~receiving proper notice of the issues, allegations, and possible penalties. If ~~[the]a~~claimant waives [his]the right to a hearing by ~~[so]~~advising the Department or failing

to attend ~~[the hearing]~~ after receiving ~~[a]~~the notice, the Department ~~[with]~~shall issue a decision based on the best and most reliable ~~[available]~~ information available, ~~[if that information is reasonably considered to be reliable.]~~ However, if ~~[the]a~~claimant [failed to] does not receive the notice of ~~[the]~~hearing due to circumstances beyond ~~[his]~~the claimant's control, until after the hearing date, the ~~[his]~~right to a hearing is not forfeited, ~~[considered to have been provided, and, unless he waives his right to an initial hearing, the decision must be vacated and a new hearing scheduled.]~~ In such situations, unless a claimant waives the right to an initial hearing, the Department shall reopen the record and allow the submission of all evidence at a hearing. If the original determination is upheld, the date of the disqualification period shall go back to the original disqualification date. ~~[For example: If at the time the notice of hearing was mailed the claimant had moved and therefore, the notice of hearing was not sent to his current address, the failure to receive the notice is beyond his control because he was not filing for unemployment insurance benefits at the time the notice was mailed and he had no obligation to provide the Department with a correct address.]~~

R994-405-504. Disqualification and Penalty.

(1) Penalty Cannot Be Modified.

The Department has no authority to reduce or otherwise ~~[adjust]~~modify the period of disqualification or the monetary penalties ~~[required by the Act]~~imposed by statute.

~~[(2)]~~Penalty Period:

~~—~~If the claimant has fraudulently filed for benefits, the penalty for future weeks is 13 weeks for the first week of fraud, and 6 weeks for each additional week of fraud, not to exceed a total penalty period of 49 weeks. The penalty period begins on the Sunday following the initial issuance by the Department of the Notice of Denial of Benefits with regard to the issue of fraud.

~~—(3)]~~(2) Week of Fraud.

A "week of fraud" ~~[with respect to which"]~~ shall include[s] each week ~~[for which waiting week credit is given or any payment has been claimed as the result of fraud:]~~any benefits have been paid due to fraud.

~~[(4)]~~(3) Overpayment and [Administrative] Penalty.

When ~~[a claimant is found to have committed]~~ fraud is found to exist, ~~[he is disqualified and]~~ an overpayment ~~[with]~~shall be established ~~[for]~~in the amount of the benefits actually received. In addition, ~~[the]a~~claimant [is] shall be required to repay, as a civil penalty, the amount of benefits ~~[actually]~~ received as a direct result of fraud, ~~[the fraud for the week(s):]~~

(a) "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid ~~[means those]~~ refers to benefits used to reduce or off-set an overpayment or used as a payment to the Office of Recovery Services for child support obligations or other payments ~~[permitted]~~as required by law.

~~[(5)]~~(4) Additional Penalties.

Criminal ~~[fines and imprisonment]~~prosecution ~~[for acts]~~ of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-405-505. Repayment.

~~[Repayment of σ]~~Overpayments established under Subsection 35A-4-405(5) will be collected in accordance with Subsection 35A-

4-406(4)(b) and Section R994-406-404 or by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. ~~(+)(c)~~ The Department ~~will~~ may use unemployment insurance benefits ~~due~~ payable for weeks prior to the penalty period to reduce overpayments.

R994-405-506. Future Eligibility.

A claimant ~~is~~ shall be ineligible for ~~any~~ unemployment benefits or waiting week credit following ~~the~~ a disqualification for fraud ~~as long as any amount is owed.~~ until any overpayment established in conjunction with the disqualification has been satisfied in full. ~~Therefore, the~~ Any overpayment established under Subsection 35A-4-405(5) may NOT be satisfied by deductions from benefit checks for weeks claimed after the penalty period ends, ~~because the~~ as a claimant ~~cannot receive~~ is precluded from receiving any future benefits or ~~credit for a~~ waiting week credit as long as there is an outstanding fraud overpayment. However, ~~he~~ a claimant may be ~~allowed~~ permitted to file a ~~subsequent initial~~ new claim to ~~protect his rights to benefits with respect to a~~ preserve a particular benefit year. An overpayment ~~is~~ shall be considered satisfied ~~at~~ as of the beginning of the week ~~in~~ during which the cash payment is received by the Department or in the case of payment by personal check, the beginning of the week ~~in~~ during which the check ~~has been~~ is honored by the bank. If ~~the~~ a claimant was not aware at the time of filing an initial claim that ~~he had~~ there was an outstanding fraud overpayment, benefits ~~will~~ shall be allowed as of the effective date of the new claim if ~~the~~ a claimant repays the overpayment within seven days of ~~when he is advised~~ the date the notice of the outstanding overpayment is mailed.

R994-405-507. Examples.

Depending on the issue, a disqualification could result in a denial of benefits for one week, a specific number of weeks or an indefinite number of weeks. A disqualifying separation results in an indefinite denial, continuing until the claimant has returned to work and earned six times his or her weekly benefit amount. The disqualification applicable to the reason for the underlying denial determines the amount of the fraud penalties and disqualification periods in each case.

(1) Failure to Report Reason for Separation. A claimant who was discharged for disqualifying conduct reports the separation as a layoff and receives benefits. Each benefit check received is paid due to the original false statements, even though the claimant may subsequently answer the Department's weekly questions correctly. Therefore, all benefits received would be "due to fraud." The fraud penalties and disqualification periods would, therefore, apply to all weeks benefits were received. ~~(+)~~ Failure to Report Reason for Separation:

~~If the claimant failed to report the correct reason for separation which, if reported, would have resulted in an indefinite disqualification, the elements of fraud are established, and he consequently received 26 weeks of unemployment insurance benefits to which he was not entitled, fraud is committed with respect to all 26 weeks because all the subsequent payments were made as a result of the fraudulent omission, even though false statements were not made during each of those weeks. An overpayment must be assessed for each of the 26 weeks, and the penalty period is 13 weeks for the first week and 6 weeks for each~~

~~additional week, up to 49 weeks. The claimant must repay twice the amount received for all 26 weeks.~~

~~(2) Failure to Report Earnings:~~

~~If the claimant has a weekly benefit amount of \$100 and reports no earnings, when in fact he earned \$50, he was overpaid \$20 after consideration of the 30% earnings allowance. However, if he is found to have committed fraud with respect to this week, he will be disqualified for the week under Subsection 35A-4-405(5) and all benefits received for a week of disqualification must be repaid. The overpayment is \$100 for the week and an additional penalty of \$100 which is the fraud penalty. He is required to repay \$200. He will also be penalized for 13 weeks beginning with the Sunday following the issuance of the decision.]~~

~~(2) Failure to Report Earnings.~~

The claimant has a weekly benefit amount of \$100 and reports no earnings when there was \$50 in reportable earnings for the week at issue. The Act provides a claimant may earn up to 30% of his or her weekly benefit amount with no deduction. After considering the 30% factor in the present example, the claimant was overpaid in the amount of \$20. If the elements of fraud were established, all benefits paid for a disqualified week would be established as an overpayment. The claimant would also be liable to repay, as a civil penalty, the \$20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment of \$120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

KEY: unemployment compensation, employment, employee's rights, employee termination

~~July 1, 1997~~ February 17, 1999

~~35A-4-501(1)(b)~~

35A-4-502(1)(b)

35A-1-104(4)

35A-4-405

◆ ————— ◆
End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN 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 agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends February 16, 1999. At its option, the agency may hold public hearings.

From the end of the waiting period through May 15, 1999, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Public Safety, Fire Marshal
R710-8
 Day Care Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 21712
 FILED: 12/16/1998, 14:30
 RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To complete all rule changes that were directed with regard to R710-8 by the Utah Fire Prevention Board when the Board met on November 19, 1998. Inadvertently and unintentionally, several proposed amendments were left out of the December 15, 1998 filing. These amendments need to be added to the rule to comply with the direction of the Fire Prevention Board and comply with the Utah Child Care Licensing Act that was passed in S.B. 26 during the 1998 session of the Utah State Legislature.

(**DAR Note:** S.B. 26 is found at 1998 Utah Laws 158, and is effective as of May 4, 1998.)

SUMMARY OF THE RULE OR CHANGE: It was realized after the last rule filing that several very important sections to correct this rule and place this rule in concert with the newly enacted Utah Child Care Licensing Act were inadvertently left out of the December 15, 1998 rule filing. The additional proposed amendments are as follows: (1) Subsection R710-8-1(1.1) is proposed to add the publication entity that authors the Uniform Fire Code; (2) Section R710-8-2, "Definitions," is proposed to have the "Day Care Center" definition amended to five or more clients rather than six to comply with the established guidelines of the Utah Child Care Licensing Act and the rules adopted pursuant to this statute by the Department of Health; (3) Subsections R710-8-3(3.1) through R710-8-3(3.13) are proposed to clarify and add several amendments that were left out of the initial filing as directed by the Fire Prevention Board.

(**DAR Note:** The original proposed amendment upon which this change in proposed rule is based was published in the December 15, 1998, issue of the *Utah State Bulletin*. A corresponding 120-day (emergency) rule is found under DAR No. 21742 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: \$50 would be the anticipated cost to the state budget to copy the rewritten rule and send it out to all that are required to have a copy.
- ❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings seen by local government because this rule does not affect local government.
- ❖ OTHER PERSONS: There might be an anticipated cost to the Family Day Care providers in the usage of a home where any fire and life safety items might need to be installed to make the home fire safe.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons will vary according to the type, age, and style of home to be used for Family Day Care. If a home is to be used for Family Day Care and the provider doesn't have two exits from the level where day care will be provided, a second exit will need to be installed. The anticipated cost for a second exit would be from \$200 to \$2,500 depending on the type of exit required, the location of the desired exit such as a basement or second story, the logistics to complete the exit system, and who completes the work. The Family Day Care provider would also be required to provide smoke detectors and a portable fire extinguisher if they are not already in the home. A single station battery operated smoke detector is approximately \$10 and a 5-pound portable fire extinguisher is approximately \$50.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After review of these proposed changes with the State Fire Marshal, and as recommended by the Utah Fire Prevention Board, it is my opinion that the proposed amendments in this rule will comply with the newly enacted Utah Child Care Licensing Act. It is also my opinion that the fiscal impact is minimal to provide a reasonable degree of fire and life safety for the care of as many as 16 children in a home.

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

Public Safety
 Fire Marshal
 Suite 302
 5272 South College Drive
 Murray, UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent R. Halladay at the above address, by phone at (801) 284-6350, by FAX at (801) 284-6351, or by Internet E-mail at psdomain.psudi.bhallada@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 02/16/1999.

THIS RULE MAY BECOME EFFECTIVE ON: 02/17/1999

AUTHORIZED BY: Brent R. Halladay, Chief Deputy State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-8. Day Care Rules.****R710-8-1. Adoption of Codes.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-8-3, et seq.

1.2 Uniform Building Code (UBC), 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

~~[1-2]~~1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

"Board" means Utah Fire Prevention Board.

"Client" means a child or adult receiving care from other than a parent, relative or guardian.

"Day Care" means any building or portion thereof, where clients receive care, maintenance, and supervision for less than 24 hours per day and which are not classified in the Uniform Building Code as E-1 or E-2 occupancies.

"Day Care Center" means providing care for five or more~~[than six]~~ clients in a place other than a home. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

"Family Day Care" means providing care for clients listed in the following two groups:

a. Type I - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

b. Type II - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UFC" means Uniform Fire Code.

R710-8-3. Amendments and Additions.

3.1 Family Day Care units shall have ~~[two remotely located exits from each floor occupied by clients that shall lead to an open space at ground level]~~on each floor occupied by clients, two separate exits, arranged so that if one is blocked the other will be available.

3.2 Family Day Care units that are located ~~[above or below the main story shall be provided with two exits, one of which shall discharge directly to the outside]~~in the basement or on the second story shall be provided with two exits, one of which shall discharge directly to the outside. Windows are not acceptable as exits.

3.3 Family Day Care units shall not be located above the second story.

3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

~~[3-2]~~3.6 Family Day Care units shall have portable fire extinguishers and single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.7 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

~~[3-3]~~3.8 Day Care Centers shall comply with the E-3 requirements of the Uniform Building Code.

~~[3-4]~~3.9 Places of religious worship shall not be required to meet the provisions of this Rule in order to operate a nursery while religious services are being held in the building.

~~[3-5]~~3.10 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

~~[3-6]~~3.11 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

~~[3-7]~~3.12 Fire drills shall be conducted in Family Day Care units quarterly, and shall include the complete evacuation from the building of all clients and staff. Fire Drills in Day Care Centers shall be completed as required in UFC, Section 1303.3.3, under Group E Occupancies. All fire drills shall be documented to include the date of the fire drill and who participated.

~~[3-8]~~3.13 The Authority Having Jurisdiction shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

~~[3-9 Infants shall not be housed in basements or above the first story unless permitted by the Uniform Fire Code or the Uniform Building Code.]~~

.....

KEY: fire prevention, day care
[September 1, 1998]February 17, 1999

53-7-204



**End of the Notices of Changes
in Proposed Rules Section**

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that 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.

Public Safety, Fire Marshal **R710-8** Day Care Rules

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 21742
FILED: 12/16/1998, 14:30
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board proposes to update the currently enacted rule to comply to the Utah Child Care Licensing Act that was passed during the 1998 session of the Utah State Legislature and is now in effect.

SUMMARY OF THE RULE OR CHANGE: On November 19, 1998, the Utah Fire Prevention Board met and addressed the updating of R710-8 to comply with the newly enacted Utah Child Care Licensing Act statute (S.B. 26) passed during the 1998 session of the Utah State Legislature. The proposed amendments are as follows: (1) Subsection R710-8-1(1.1) is proposed to be amended by dropping the usage of the National Fire Protection Association (NFPA), Standard 101, Life Safety Code, and replacing it with the Uniform Fire Code, Volume 1, 1997 edition; (2) Subsection R710-8-1(1.2)(1.2.1) is proposed to be eliminated as an incorporated sub-reference to the Uniform Building Code as it now does not apply; (3) Section R710-8-2, "Definitions," is proposed to have the "Day Care Center" and "Family Day Care" definitions rewritten to comply with the established guidelines of the Utah Child Care Licensing Act and the rules adopted

pursuant to this statute by the Department of Health; (4) Section R710-8-2, "Definitions," is proposed to have the definition of "Group Day Care" eliminated due to it not being an established category of day care within the Utah Child Care amendments to comply with the Utah Child Care Licensing Act.

(DAR Note: S.B. 26 is found at 1998 Utah Laws 158, and is effective as of May 4, 1998. A corresponding change in proposed rule is under DAR No. 21712 in this *Bulletin*, and the original amendment was published in the December 15, 1998, issue of the *Utah State Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Uniform Fire Code, Volume 1, 1997 edition

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** \$50 would be the anticipated cost to the state budget to copy the rewritten rule and send it out to all that are required to have a copy.

❖**LOCAL GOVERNMENTS:** There is no anticipated cost or savings seen by local government because this rule does not affect local government.

❖**OTHER PERSONS:** There might be an anticipated cost to the Family Day Care providers in the usage of a home where any fire and life safety items might need to be installed to make the home fire safe.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons will vary according to the type, age, and style of home to be used for Family Day Care. If a home is to be used for Family Day Care and the provider

doesn't have two exits from the level where day care will be provided, a second exit will need to be installed. The anticipated cost for a second exit would be from \$200 to \$2,500 depending on the type of exit required, the location of the desired exit such as a basement or second story, the logistics to complete the exit system, and who completes the work. The Family Day Care provider would also be required to provide smoke detectors and a portable fire extinguisher if they are not already in the home. A single station battery operated smoke detector is approximately \$10 and a 5-pound portable fire extinguisher is approximately \$50.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After review of these proposed changes with the State Fire Marshal, and as recommended by the Utah Fire Prevention Board, it is my opinion that the proposed amendments in this rule will comply with the newly enacted Utah Child Care Licensing Act. It is also my opinion that the fiscal impact is minimal to provide a reasonable degree of fire and life safety for the care of as many as 16 children in a home.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

With the passage of the Utah Child Care Licensing Act during the 1998 session of the Utah State Legislature, it has greatly changed the categories, the requirements, and the amount of clients that are in each of those various categories with regard to Day Care. There have now been a number of calls to the State Fire Marshal's Office from local fire officials stating that what has been approved as Day Care Rules for the fire service for a number of years is now being challenged by the day care providers. The local fire officials have stated that the day care providers state that the law has now changed and R710-8 is not in concert with the newly enacted statute. The Utah Fire Prevention Board met on November 19, 1998, after finally receiving the rules established by the Department of Health on day care, and using the statute and the Department of Health's rules, have now corrected R710-8 to be in compliance with the newly enacted statute. This emergency rule will now allow the fire service to be immediately in concert with the statute and Department of Health rules, and not have an undue effect on the day care industry.

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

Public Safety
Fire Marshal
Suite 302
5272 South College Drive
Murray, UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent R. Halladay at the above address, by phone at (801) 284-6350, by FAX at (801) 284-6351, or by Internet E-mail at psdomain.psudi.bhallada@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 12/16/1998

AUTHORIZED BY: Brent R. Halladay, Chief Deputy State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-8. Day Care Rules.

R710-8-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 ~~[National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 1997 edition, except as amended by provisions listed in R710-8-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 30, New Day Care Occupancies, Sections 30-6 and 30-7 - Day Care Homes; Chapter 31, Existing Day Care Occupancies, Sections 31-6 and 31-7 - Day Care Homes; and other sections referenced within and pertaining to these chapters only.]~~ Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-8-3, et seq.

1.2 Uniform Building Code (UBC), 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

~~[1.2.1 Group Day Care units shall also apply R156-56-20, Amendments to the UBC, Chapter 3, Section 305.1, Division 3, in carrying out the purposes of this Rule.~~

~~1.3]~~ 1.3 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-8-2. Definitions.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

"Board" means Utah Fire Prevention Board.

"Client" means a child or adult receiving care from other than a parent, relative or guardian.

"Day Care" means any building or portion thereof, where clients receive care, maintenance, and supervision for less than 24 hours per day and which are not classified in the Uniform Building Code as E-1 or E-2 occupancies.

"Day Care Center" means providing care for [thirteen] five or more clients in a place other than a home. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

"Family Day Care" means ~~[a service of]~~ providing care for ~~[not more than six]~~ clients listed in the following two groups:

a. [~~"A" means not less than one and not more than three clients. The unit will be unlicensed, unregulated, and exempt.~~]Type I - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

b. [~~"B" means not less than four and not more than six clients. The unit shall be licensed and regulated by regional offices of the Department of Human Services.~~]Type II - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

[~~"Group Day Care" means a service of providing care for not less than seven and not more than twelve clients.~~]

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

[~~"LSC" means Life Safety Code.~~]

~~"NFPA" means National Fire Protection Association.~~

] "SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UFC" means Uniform Fire Code.

R710-8-3. Amendments and Additions.

3.1 Family Day Care units [~~shall comply with the requirements of NFPA, Standard 101, Life Safety Code (LSC), Chapter 30, Sections 30-6 and 30-7, and Chapter 31, Sections 31-6 and 31-7, where applicable, and the R-3 requirements of the Uniform Building Code. Section 31-1.1.2 of NFPA, Standard 101, Life Safety Code, 1997 edition, and all other sections that reference staff-to-client ratios, is deleted with reference to Family Day Care units, and is replaced with R710-8-3.8.~~]shall have on each floor occupied by clients, two separate exits, arranged so that if one is blocked the other will be available.

3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two exits, one of which shall discharge directly to the outside. Windows are not acceptable as exits.

3.3 Family Day Care units shall not be located above the second story.

3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.6[~~3.2 Group Day Care units shall comply with the Uniform Building Code Statewide Amendment for Group Day Care and the R-3 requirements of the Uniform Building Code.~~] Family Day Care units shall have portable fire extinguishers and single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.7 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

[~~3.3~~]3.8 Day Care Centers shall comply with the E-3 requirements of the Uniform Building Code.

[~~3.4~~]3.9 Places of religious worship shall not be required to meet the provisions of this Rule in order to operate a nursery while religious services are being held in the building.

[~~3.5~~]3.10 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

[~~3.6~~]3.11 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

[~~3.7~~]3.12 Fire drills shall be conducted in Family[~~and Group~~] Day Care units quarterly, and shall include the complete evacuation from the building of all clients and staff. Fire Drills in Day Care Centers shall be completed as required in UFC, Section 1303.3.3, under Group E Occupancies. All fire drills shall be documented to include the date of the fire drill and who participated.

[~~3.8~~]3.13 The Authority Having Jurisdiction shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

[~~3.9~~ Infants shall not be housed in basements or above the first story unless permitted by the Uniform Building Code or the Life Safety Code.]

.....

**KEY: fire prevention, day care
December 16, 1998**

53-7-204



**End of the Notices of 120-Day
(Emergency) Rules Section**

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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 REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES 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 are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Natural Resources; Oil, Gas and Mining; Administration **R642-200** Applicability

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21750
FILED: 12/17/1998, 14:37
RECEIVED BY: NL

NOTICE OF REVIEW 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 Sections 40-6-5, 40-8-6, and 40-10-6, and is specifically authorized by the Government Records Access and Management Act (GRAMA), Section 63-2-101 et seq.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from persons in support of or in opposition to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is sought to be continued so that a process remains in place for managing the records of the Division and Board of Oil, Gas and Mining.

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

Natural Resources
Oil, Gas and Mining; Administration
Suite 1210, Natural Resources Building
1594 West North Temple
PO Box 145801

Salt Lake City, UT 84114-5801, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ronald W. Daniels at the above address, by phone at (801) 538-5316, by FAX at (801) 359-3940, or Internet E-mail at rdaniels@state.ut.us.

AUTHORIZED BY: Ronald W. Daniels, Coordinator of Minerals Research

EFFECTIVE: 12/17/1998



Public Safety, Law Enforcement and Technical Services, Criminal Identification **R722-2** Review and Challenge of Criminal Record

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 21744
FILED: 12/16/1998, 16:02
RECEIVED BY: NL

NOTICE OF REVIEW 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: Subsection 53-5-214(8)(a) requires the Commissioner of Public Safety to establish procedures to allow the public to review their criminal history record information. Subsection 53-5-214(8)(b) requires the Commissioner to establish procedures

to allow the public to challenge the completeness and accuracy of their criminal history record information as contained in the department's computerized criminal history files. The purpose of this rule is to establish those procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW 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: This rule should be continued because it deals with a very important right of the public. It advises the public how they may review and challenge the accuracy of their criminal history record information.

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

Public Safety
Law Enforcement and Technical Services,
Criminal Identification
First Floor, Calvin L. Rampton Complex
4501 South 2700 West
Box 14280
Salt Lake City, UT 84114-8230, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
J. Francis Valerga at the above address, by phone at (801) 965-4463, by FAX at (801) 965-4608, or Internet E-mail at psdomain.psmainjvalerg@email.state.ut.us.

AUTHORIZED BY: Richard A. Greenwood, Superintendent

EFFECTIVE: 12/16/1998

require off-highway vehicle use designation on trust lands. These designations have been established in accordance with Section 41-22-10.1 for motor vehicles.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by this Agency concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Off-Highway vehicle use is becoming an increasingly popular recreation and the regulation of their use on trust lands is in the best interest of the corresponding beneficiary in order to protect the land. This rule provides the necessary regulations and designations.

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

School and Institutional Trust Lands
Administration
Suite 500
675 East 500 South
Salt Lake City, UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kevin S. Carter at the above address, by phone at (801) 538-5100, by FAX at (801) 355-0922, or Internet E-mail at tmain.kcarter@email.state.ut.us.

AUTHORIZED BY: Kevin S. Carter, Assistant Director/Surface

EFFECTIVE: 12/16/1998



School and Institutional Trust Lands,
Administration
R850-110
Off-Highway Vehicle Designations

**FIVE-YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 21741
FILED: 12/16/1998, 14:16
RECEIVED BY: NL

**End of the Five-Year Notices of Review
and Statements of Continuation Section**

**NOTICE OF REVIEW 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: Subsection 53C-1-302(1)(a)(ii) authorizes the Director of the Agency to

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

Administrative Services

Finance

No. 21622 (REP): R25-4. Uniform Clothing Allowance for State Employees.
Published: November 15, 1998
Effective: December 29, 1998

No. 21625 (AMD): R25-6. Relocation Allowance.
Published: November 15, 1998
Effective: December 29, 1998

No. 21627 (AMD): R25-7. Travel-Related Reimbursements for State Employees.
Published: November 15, 1998
Effective: December 29, 1998

No. 21629 (AMD): R25-8. Meal Allowance.
Published: November 15, 1998
Effective: December 29, 1998

No. 21630 (REP): R25-9. Payment of Professional Dues and License Fees.
Published: November 15, 1998
Effective: December 29, 1998

No. 21631 (REP): R25-10. Honorariums.
Published: November 15, 1998
Effective: December 29, 1998

No. 21632 (REP): R25-11. Service and Retirement Awards for State Employees.
Published: November 15, 1998
Effective: December 29, 1998

No. 21633 (REP): R25-12. American Express Cards.
Published: November 15, 1998
Effective: December 29, 1998

Agriculture and Food

Regulatory Services

No. 21620 (REP): R70-510. Standards for Meat and Meat Products.
Published: November 15, 1998
Effective: December 16, 1998

No. 21621 (REP): R70-520. Slaughtering and Processing of Rabbits.
Published: November 15, 1998
Effective: December 16, 1998

Commerce

Consumer Protection

No. 21368 (NEW): R152-30. Utah Personal Introduction Services Protection Act.
Published: September 1, 1998
Effective: December 30, 1998

Occupational and Professional Licensing

No. 21572 (AMD): R156-56. Utah Uniform Building Standard Act Rules.
Published: November 15, 1998
Effective: January 1, 1999

No. 21573 (AMD): R156-56-704. Amendments to the UBC.
Published: November 15, 1998
Effective: January 1, 1999

No. 21574 (AMD): R156-56-704. Amendments to the UBC.
Published: November 15, 1998
Effective: January 1, 1999

No. 21575 (AMD): R156-56-706. Amendments to the IPC.
Published: November 15, 1998
Effective: January 1, 1999

Environmental Quality

Air Quality

DAR correction notice: In the December 15, 1998, *Bulletin*, an effective notice for an amendment on R307-220-31 was printed. The amendment was for R307-~~110~~-31. The notice should have been:

No. 21272 (AMD): R307-110-31. Section X, Basic Inspection and Maintenance, Part A, General Requirements and Applicability.
Published: August 1, 1998
Effective: November 20, 1998

Health

Health Data Analysis

No. 21637 (AMD): R428-13. Health Data Authority. Audit and Reporting of HMO Performance Measures.
Published: November 15, 1998
Effective: December 24, 1998

NOTICES OF RULE EFFECTIVE DATES

Human Resource Management

Administration

No. 21634 (AMD): R477-1. Definitions.
Published: November 15, 1998
Effective: December 16, 1998

No. 21635 (AMD): R477-3. Control of Personal Service Expenditures.
Published: November 15, 1998
Effective: December 16, 1998

No. 21636 (AMD): R477-8. Working Conditions.
Published: November 15, 1998
Effective: December 16, 1998

Human Services

Recovery Services

No. 21638 (AMD): R527-201. Medical Support Services.
Published: November 15, 1998
Effective: December 17, 1998

Natural Resources

Parks and Recreation

No. 21664 (AMD): R651-215. Personal Flotation Devices.
Published: December 1, 1998
Effective: January 1, 1999

Wildlife Resources

No. 21498 (AMD): R657-13. Taking Fish and Crayfish.
Published: October 15, 1998
Effective: December 28, 1998

Pardons (Board of)

Administration

No. 21596 (REP): R671-204. Hearing Continuance.
Published: November 15, 1998
Effective: January 1, 1999

No. 21597 (REP): R671-401. Parole Incident Reports.
Published: November 15, 1998
Effective: January 1, 1999

No. 21665 (NEW): R671-403. Restitution.
Published: December 1, 1998
Effective: January 1, 1999

No. 21598 (REP): R671-501. Warrants of Arrest.
Published: November 15, 1998
Effective: January 1, 1999

No. 21600 (REP): R671-503. Prerevocation Hearings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21601 (REP): R671-504. Timeliness of Parole Revocation Hearings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21602 (REP): R671-505. Parole Revocation Hearings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21604 (REP): R671-507. Restarting the Parole Period.
Published: November 15, 1998
Effective: January 1, 1999

No. 21605 (REP): R671-508. Evidentiary Hearings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21606 (NEW): R671-509. Parole Incident Reports.
Published: November 15, 1998
Effective: January 1, 1999

No. 21607 (NEW): R671-510. Evidence for Issuance of Warrants.
Published: November 15, 1998
Effective: January 1, 1999

No. 21608 (NEW): R671-511. Warrants of Arrest.
Published: November 15, 1998
Effective: January 1, 1999

No. 21609 (NEW): R671-512. Execution of the Warrant.
Published: November 15, 1998
Effective: January 1, 1999

No. 21610 (NEW): R671-513. Expedited Determination on Parolee Challenge to Probable Cause.
Published: November 15, 1998
Effective: January 1, 1999

No. 21611 (NEW): R671-514. Waiver and Pleas of Guilt.
Published: November 15, 1998
Effective: January 1, 1999

No. 21612 (NEW): R671-515. Timeliness of Parole Revocation Hearings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21613 (NEW): R671-516. Parole Revocation Hearings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21614 (NEW): R671-517. Evidentiary Hearings and Proceedings.
Published: November 15, 1998
Effective: January 1, 1999

No. 21615 (NEW): R671-518. Conduct of Proceedings When a Criminal Charge Results in Conviction.
Published: November 15, 1998
Effective: January 1, 1999

No. 21616 (NEW): R671-519. Conduct of Proceedings When Criminal Charge Results in Acquittal.
Published: November 15, 1998
Effective: January 1, 1999

No. 21617 (NEW): R671-520. Treatment of Confidential Testimony.
Published: November 15, 1998
Effective: January 1, 1999

No. 21618 (NEW): R671-521. Alternatives to Re-Incarceration of Parolees.
Published: November 15, 1998
Effective: January 1, 1999

No. 21619 (NEW): R671-522. Continuances Due to Pending Criminal Charges.
Published: November 15, 1998
Effective: January 1, 1999

Tax Commission

Property Tax

No. 21639 (AMD): R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Section 59-2-918 through 59-2-924.
Published: November 15, 1998
Effective: December 18, 1998

No. 21556 (AMD): R884-24P-33. 1999 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.
Published: November 1, 1998
Effective: December 18, 1998

No. 21501 (AMD): R884-24P-46. Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.
Published: October 15, 1998
Effective: December 18, 1998

No. 21557 (AMD): R884-24P-53. 1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.
Published: November 1, 1998
Effective: December 18, 1998

No. 21502 (AMD): R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.
Published: October 15, 1998
Effective: December 18, 1998

No. 21503 (AMD): R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.
Published: October 15, 1998
Effective: December 18, 1998

No. 21640 (AMD): R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.
Published: November 15, 1998
Effective: December 18, 1998

Transportation

Motor Carrier

No. 21571 (REP): R909-13. Standards for Utah School Buses.
Published: November 15, 1998
Effective: January 1, 1999

Workforce Services

Workforce Information and Payment Services

No. 21578 (AMD): R994-207. Unemployment.
Published: November 15, 1998
Effective: December 16, 1998

End of the Notices of Rule Effective Dates Section

**1998
RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 1998, through January 1, 1999. 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).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.state.ut.us/>).

DAR Note: It is customary for the Division of Administrative Rules to publish the complete Indexes for the previous year in the January 15 issue of the *Utah State Bulletin* of the next year. Because of the amount of filings for 1998, the size of the Indexes, and space constraints, the Division can only include the complete Agency Index in this issue of the *Bulletin*. The Division anticipates that the complete indexes will be available by early March 1999 in the *Index of Changes* publication which will be available from the Division.

Any questions may be directed to: Kenneth A. Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City UT 84114-1007; Phone: (801) 538-3777; FAX: (801) 538-1773; or E-mail: asdomain.asitmain.khansen@email.state.ut.us

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	* = Text too long to print in <i>Bulletin</i> , or repealed text not printed in <i>Bulletin</i>
5YR = Five-Year Review	
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-1	Public Petitions for Declaratory Orders	21435	5YR	09/11/98	98-19/104
R13-2	Access to Records	20537	NSC	01/06/98	Not Printed
R13-3	Americans With Disabilities Act Grievance Procedures	20631	5YR	01/08/98	98-3/89

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	20976	AMD	07/01/98	98-9/3
R15-4-3	Publication Dates and Deadlines	20952	AMD	07/01/98	98-8/2
R15-5	Administrative Rules Adjudicative Proceedings	21393	5YR	08/21/98	98-18/49
R15-5	Administrative Rules Adjudicative Proceedings	21394	NSC	10/17/98	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	21212	AMD	10/29/98	98-13/4
R23-4	Suspension/Debarment From Consideration for Award of State Contracts	20702	5YR	01/28/98	98-4/128
R23-4	Suspension/Debarment From Consideration for Award of State Contracts	21213	AMD	10/29/98	98-13/7
R23-5	Contingency Funds	20703	5YR	01/28/98	98-4/128
R23-6	Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations	20704	5YR	01/28/98	98-4/129
R23-7	Utah State Building Board Policy Statement Master Planning	20705	5YR	01/28/98	98-4/129
R23-8	Planning Fund Use	20706	5YR	01/28/98	98-4/130
R23-9	Building Board State/Local Cooperation Policy	20707	5YR	01/28/98	98-4/130
R23-10	Naming of State Buildings	20708	5YR	01/28/98	98-4/131
R23-11	Facilities Allocation and Sale Procedures	20709	5YR	01/28/98	98-4/131
R23-12	State of Utah Parking Policy	21186	5YR	06/01/98	98-12/37
R23-12	State of Utah Parking Policy	21206	REP	10/29/98	98-13/9
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	21150	5YR	05/15/98	98-11/200
R23-21	Division of Facilities Construction and Management Lease Procedures	20710	5YR	01/28/98	98-4/132
R23-24	Capital Projects Utilizing Non-appropriated Funds	20711	5YR	01/28/98	98-4/132
R23-29	Across the Board Delegation	21208	AMD	10/29/98	98-13/10
<u>Finance</u>					
R25-4	Uniform Clothing Allowance for State Employees	21622	REP	12/29/98	98-22/2
R25-5	Payment of Per Diem to Boards	21623	5YR	10/30/98	98-22/140
R25-6	Relocation Allowance	21624	5YR	10/30/98	98-22/140
R25-6	Relocation Allowance	21625	AMD	12/29/98	98-22/2
R25-7	Travel-Related Reimbursements for State Employees	21626	5YR	10/30/98	98-22/141
R25-7	Travel-Related Reimbursements for State Employees	21627	AMD	12/29/98	98-22/4
R25-8	Meal Allowance	21628	5YR	10/30/98	98-22/141
R25-8	Meal Allowance	21629	AMD	12/29/98	98-22/8
R25-9	Payment of Professional Dues and License Fees	21630	REP	12/29/98	98-22/9
R25-10	Honorariums	21631	REP	12/29/98	98-22/10

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R25-11	Service and Retirement Awards for State Employees	21632	REP	12/29/98	98-22/10
R25-12	American Express Cards	21633	REP	12/29/98	98-22/12
<u>Fleet Operations, Surplus Property</u>					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	21683	5YR	11/17/98	98-24/127
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies and Services	21514	5YR	10/05/98	98-21/96
R33-7	Cost Principles	21515	5YR	10/05/98	98-21/96
R33-9	Insurance Procurement	21516	5YR	10/05/98	98-21/97
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	20931	5YR	03/19/98	98-8/63
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	21337	AMD	09/15/98	98-16/3
R58-1-5	Cattle	21480	AMD	11/17/98	98-20/2
R58-18-9	Identification	21182	AMD	07/16/98	98-12/10
R58-19	Compliance Procedures	20279	NEW	01/05/98	97-24/12
<u>Marketing and Conservation</u>					
R65-2	Utah Cherry Marketing Order	21512	5YR	10/05/98	98-21/97
R65-5	Utah Red Tart and Sour Cherry Marketing Order	21513	5YR	10/05/98	98-21/98
R65-11	Utah Sheep Marketing Order	20699	NEW	03/19/98	98-4/8
<u>Plant Industry</u>					
R68-3	Utah Fertilizer Act Governing Fertilizers and Soil Amendments	21389	AMD	10/16/98	98-18/13
R68-3-2	Registration of Products	21559	NSC	11/12/98	Not Printed
R68-5	Grain Inspection	21509	5YR	10/05/98	98-21/98
R68-9	Utah Noxious Weed Act	21510	5YR	10/05/98	98-21/98
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	21511	5YR	10/05/98	98-21/99
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	20838	5YR	03/05/98	98-7/72
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	20962	AMD	05/16/98	98-8/2
R68-15-1	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	21471	NSC	10/17/98	Not Printed
R68-15-3	Areas Under Quarantine	21096	AMD	07/02/98	98-11/24
R68-16	Quarantine Pertaining to Pine Shoot Beetle, Tomiscus piniperda	21432	5YR	09/11/98	98-19/104

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R68-17	Quarantine Pertaining to Necrotic Strain of the Potato Virus Y	21433	5YR	09/11/98	98-19/105
R68-19	Compliance Procedures	20280	NEW	01/15/98	97-24/13
R68-19-4	Citation	20813	AMD	04/15/98	98-6/16
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	20281	NEW	01/15/98	97-24/14
R70-201-4	Citation	20814	AMD	04/15/98	98-6/16
R70-510	Standards for Meat and Meat Products	21620	REP	12/16/98	98-22/13
R70-520	Slaughtering and Processing of Rabbits	21621	REP	12/16/98	98-22/14
R70-530	Food Establishment Sanitation Rule	20721	R&R	05/16/98	98-4/10
R70-530	Food Protection	21231	AMD	09/15/98	98-14/4
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-6	Violation Schedule	21033	AMD	07/01/98	98-10/3
R81-1-18	Pilot Wine Tasting Program	21032	AMD	07/01/98	98-10/5
R81-1-18	Pilot Wine Tasting Program	21266	NSC	07/29/98	Not Printed
ATTORNEY GENERAL					
<u>Administration</u>					
R105-2	Records Access and Management	21538	NSC	10/23/98	Not Printed
CAREER SERVICE REVIEW BOARD					
<u>Administration</u>					
R137-2	Government Records Access and Management Act	21265	5YR	07/01/98	98-14/101
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<u>Consumer Protection</u>					
R152-30	Utah Personal Introduction Services Protection Act	21368	NEW	12/30/98	98-17/2
<u>Corporations and Commercial Code</u>					
R154-10	Utah Digital Signature Act Rules	21533	AMD	12/02/98	98-21/2
R154-10	Utah Digital Signature Act Rules	21586	NSC	12/02/98	Not Printed
R154-10	Utah Digital Signature Act Rules	21699	NSC	12/30/98	Not Printed
R154-100	Utah Administrative Procedures Act Rules	21658	5YR	11/10/98	98-23/48
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	20973	AMD	06/04/98	98-9/4
R156-3a	Architect Licensing Act Rules	20200	AMD	see CPR	97-23/4
R156-3a	Architect Licensing Act Rules	20200	CPR	02/18/98	98-2/79
R156-15-302d	Qualifications for Licensure - Examination Requirements	20894	AMD	05/05/98	98-7/8
R156-16a	Optometry Practice Act Rules	20778	AMD	04/01/98	98-5/4

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-17a	Pharmacy Practice Act Rules	20492	AMD	02/24/98	98-1/3
R156-17a	Pharmacy Practice Act Rules	21555	AMD	12/03/98	98-21/6
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	20696	5YR	01/27/98	98-4/133
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	20940	AMD	see CPR	98-8/4
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	20940	CPR	07/16/98	98-12/29
R156-31	Nurse Practice Act Rules	21029	REP	07/01/98	98-10/7*
R156-31b	Nurse Practice Act Rules	21030	NEW	07/01/98	98-10/8
R156-31b	Nurse Practice Act Rules	21234	AMD	08/20/98	98-14/36
R156-31b-102	Definitions	21278	AMD	09/01/98	98-15/3
R156-37	Controlled Substance Act Rules of the Division of Occupational and Professional Licensing	20878	AMD	05/04/98	98-7/8
R156-37	Utah Controlled Substances Act Rules	21092	NSC	05/21/98	Not Printed
R156-37-605	Emergency Verbal Prescription of Schedule II Controlled Substances	20941	AMD	05/19/98	98-8/8
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	21019	AMD	see CPR	98-10/14
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	21019	CPR	08/20/98	98-14/88
R156-40	Recreational Therapy Practice Act Rules	20697	5YR	01/27/98	98-4/133
R156-40	Recreational Therapy Practice Act Rules	20695	AMD	see CPR (First)	98-4/73
R156-40	Recreational Therapy Practice Act Rules	20695	CPR (First)	see CPR (Second)	98-8/55
R156-40	Recreational Therapy Practice Act Rules	20695	CPR (Second)	07/16/98	98-12/31
R156-44a	Nurse Midwife Practice Act Rules	21405	AMD	10/22/98	98-18/4
R156-47b	Massage Practice Act Rules	21147	AMD	07/07/98	98-11/24
R156-47b	Massage Therapy Practice Act Rules	21269	NSC	07/22/98	Not Printed
R156-49	Dietitian Rules	21390	AMD	10/19/98	98-18/9
R156-49	Dietitian Rules	21558	5YR	10/19/98	98-22/142
R156-53	Landscape Architects Licensing Act Rules	21148	AMD	07/07/98	98-11/27
R156-53	Landscape Architects Licensing Act Rules	21318	5YR	07/23/98	98-16/89
R156-54	Radiology Technologist and Radiology Practical Technician Licensing Act Rules	20173	AMD	see CPR	97-22/12
R156-54	Radiology Technologist and Radiology Practical Technician Licensing Act Rules	20173	CPR	02/03/98	98-1/199
R156-55a	Utah Construction Trades Licensing Act Rules	20650	AMD	03/05/98	98-3/23
R156-55a-302b	Qualifications for Licensure - Experience Requirements	20836	NSC	03/17/98	Not Printed
R156-55a-302b	Qualifications for Licensure - Experience Requirements	21275	NSC	07/22/98	Not Printed
R156-55b	Electricians Licensing Rules	21542	AMD	12/03/98	98-21/9
R156-55b-102	Definitions	21729	NSC	12/30/98	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	20987	AMD	07/01/98	98-9/6
R156-56	Utah Uniform Building Standard Act Rules	21572	AMD	01/01/99	98-22/16
R156-56	Utah Uniform Building Standard Act Rules	21754	NSC	01/01/99	Not Printed

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R156-56-704	Amendments to the UBC	21574	AMD	01/01/99	98-22/34
R156-56-706	Amendments to the IPC	20990	AMD	07/01/98	98-9/24
R156-56-706	Amendments to the IPC	20989	AMD	07/01/98	98-9/23
R156-56-706	Amendments to the IPC	20991	AMD	07/01/98	98-9/25
R156-56-706	Amendments to the IPC	21203	NSC	07/01/98	Not Printed
R156-56-706	Amendments to the IPC	21575	AMD	01/01/99	98-22/38
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R156-59	Employee Leasing Company Act Rules	20651	AMD	see CPR	98-3/28
R156-59	Employee Leasing Company Act Rules	20651	CPR	05/04/98	98-7/71
R156-60a	Social Worker Licensing Act Rules	20992	AMD	06/04/98	98-9/26
R156-60b	Marriage and Family Therapist Licensing Act Rules	20581	AMD	02/18/98	98-2/18
R156-60b	Marriage and Family Therapist Licensing Act Rules	21007	AMD	06/16/98	98-10/17
R156-60b-302a	Qualifications for Licensure - Education Requirements	21229	AMD	08/20/98	98-14/39
R156-60b-502	Unprofessional Conduct	20790	NSC	02/19/98	Not Printed
R156-60c	Professional Counselor Licensing Act Rules	20359	AMD	02/03/98	98-1/6
R156-60c	Professional Counselor Licensing Act Rules	21008	AMD	06/16/98	98-10/20
R156-60c-302a	Qualifications for Licensure - Education Requirements	21230	AMD	08/20/98	98-14/40
R156-60c-502	Unprofessional Conduct	20728	NSC	02/19/98	Not Printed
R156-60d	Substance Abuse Counselor Act Rules	20273	AMD	01/15/98	97-24/16
R156-61	Psychologist Licensing Act Rules	20342	AMD	02/03/98	98-1/10
R156-61-502	Unprofessional Conduct	20729	NSC	02/19/98	Not Printed
R156-63	Security Personnel Licensing Act Rules	20930	AMD	05/19/98	98-8/9
R156-63-502	Unprofessional Conduct	21174	NSC	06/03/98	Not Printed
R156-65-502	Unprofessional Conduct	21481	AMD	11/17/98	98-20/4
R156-65-502	Unprofessional Conduct	21681	NSC	12/30/98	Not Printed
R156-67-302d	Qualifications for Licensure - Examination Requirements	20974	AMD	06/04/98	98-9/29
R156-68	Utah Osteopathic Medical Practice Act Rules	21319	5YR	07/23/98	98-16/89
R156-68-302b	Qualifications for Licensure - Examination Requirements	20975	AMD	06/04/98	98-9/30
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R207-2	Policy for Donations and Loans to the State Fine Art Collection	21175	AMD	09/03/98	98-12/10
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R280-200	Rehabilitation	21256	NSC	07/07/98	Not Printed
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R307-1-1	Foreword and Definitions	20096	AMD	01/08/98	97-21/4
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R307-1-3	Control of Installations	20740	NSC	02/05/98	Not Printed
R307-1-5 (Changed to R307-105)	Emergency Controls	21104	AMD	09/15/98	98-11/37
R307-1-6 (Changed to R307-120)	Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit	21105	AMD	09/15/98	98-11/39
R307-1-6 (Changed to R307-121)	Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit	21105	AMD	09/15/98	98-11/39
R307-1-6 (Changed to R307-122)	Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit	21105	AMD	09/15/98	98-11/39
R307-1-8 (Changed to R307-801)	Asbestos Certification, Asbestos Work Practices, and Implementation of Toxic Substances Control Act, Title II	21106	AMD	09/15/98	98-11/43
R307-2 (Changed to R307-110)	State Implementation Plan	21107	AMD	09/15/98	98-11/55
R307-2-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	20099	AMD	01/08/98	97-21/14
R307-2-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	21280	NSC	07/27/98	Not Printed
R307-2-13	Section IX, Control Measures for Area and Point Sources, Part D, Ozone	21031	AMD	see CPR	98-10/28
R307-2-13	Section IX, Control Measures for Area and Point Sources, Part D, Ozone	21031	CPR	11/02/98	98-19/93
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R307-4 (Changed to R307-130)	Air Quality Board Penalty Policy and AHERA Enforcement Response Policy	21109	AMD	09/15/98	98-11/61
R307-4 (Changed to R307-135)	Air Quality Board Penalty Policy and AHERA Enforcement Response Policy	21109	AMD	09/15/98	98-11/61
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R307-7	Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery	21101	REP	09/15/98	98-11/65
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R307-8-3	Average Oxygen Content Standard	20100	AMD	01/08/98	97-21/15
R307-10 (Changed to R307-214)	National Emission Standards for Hazardous Air Pollutants	21111	AMD	09/15/98	98-11/74
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R307-11 (Changed to R307-320)	Employer-Based Trip Reduction Program	21112	AMD	09/15/98	98-11/75
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R307-16 (Changed to R307-417)	Acid Rain Requirements	21115	AMD	09/15/98	98-11/99
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R307-18 (Changed to R307-210)	Stationary Sources	21011	AMD	08/13/98	98-10/32
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R307-110-27	Section XIV, Small Business Assistance Program	21564	NSC	11/12/98	Not Printed
R307-110-31	Section X, Basic Inspection and Maintenance, Part A, General Requirements and Applicability	21272	AMD	11/20/98	98-15/4
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R307-203	Emission Standards: Sulfur Content of Fuels	21127	NEW	09/15/98	98-11/121
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R307-220	Emission Standards: Plan for Designated Facilities	21671	NSC	11/25/98	Not Printed
R307-220-3	Hospital, Medical, Infectious Waste Incinerators	21455	AMD	11/25/98	98-19/6
R307-222	Existing Incinerators for Hospital, Medical, Infectious Waste	21456	NEW	11/25/98	98-19/7
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R307-307	Davis, Salt Lake, and Utah Counties: Road Salting and Sanding	21131	NEW	09/15/98	98-11/128
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R307-326	Davis and Salt Lake Counties and Ozone Nonattainment Areas: Control of Hydrocarbon Emissions in Refineries	21133	NEW	09/15/98	98-11/131
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R307-401-2	Notice of Intent Requirements	21274	NSC	09/15/98	Not Printed
R307-403	Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas	21141	NEW	09/15/98	98-11/154
R307-405	Permits: Prevention of Significant Deterioration of Air Quality (PSD)	21142	NEW	09/15/98	98-11/157
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R307-414	Permits: Fees for Approval Orders	21146	NEW	09/15/98	98-11/170
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R309-113	Drinking Water Source Protection	20977	AMD	06/15/98	98-9/31
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R477-11	Discipline	21071	AMD	06/27/98	98-10/117
R477-12	Separations	21072	AMD	06/27/98	98-10/118
R477-12	Separations	21307	AMD	10/02/98	98-16/22
R477-13	Volunteer Programs	21073	NSC	06/27/98	Not Printed
R477-14	Substance Abuse and Drug-Free Workplace	21308	AMD	10/02/98	98-16/24
R477-15	Sexual Harassment Policy and Procedure	21309	AMD	10/02/98	98-16/25

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R495-607	Energy Assistance: Records and Benefit Management	21492	5YR	09/28/98	98-20/38
R495-810-2	Fee Schedule for Records Copies	21541	AMD	12/07/98	98-21/58

Administration (Changed to Community and Economic Development, Community Development, Community Services -- 10/23/98 -- these rules only)

R495-601 (Changed to R202-201)	Energy Assistance: General Provisions	21518	NSC	10/23/98	Not Printed
R495-602 (Changed to R202-202)	Energy Assistance Program Standards	21519	NSC	10/23/98	Not Printed
R495-603 (Changed to R202-203)	Energy Assistance Income Standards, Income Eligibility, and Payment Determination	21520	NSC	10/23/98	Not Printed
R495-604 (Changed to R202-204)	Energy Assistance: Asset Standards	21521	NSC	10/23/98	Not Printed
R495-605 (Changed to R202-205)	Energy Assistance: Program Benefits	21522	NSC	10/23/98	Not Printed
R495-606 (Changed to R202-206)	Energy Assistance: Eligibility Determination	21523	NSC	10/23/98	Not Printed
R495-607 (Changed to R202-207)	Energy Assistance: Records and Benefit Management	21524	NSC	10/23/98	Not Printed
R495-608 (Changed to R202-208)	Energy Assistance: Special State Programs	21525	NSC	10/23/98	Not Printed

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R497-100	Adjudicative Proceedings	20248	AMD	01/26/98	97-24/88
R497-100	Adjudicative Proceedings	21417	NSC	10/20/98	Not Printed
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R501-1	General Provisions	21388	AMD	10/16/98	98-18/17
R501-1	General Provisions	21540	NSC	10/16/98	Not Printed
R501-1	General Provisions	21646	NSC	12/01/98	Not Printed
R501-2	Core Standards	21083	EMR	05/04/98	98-10/139
R501-2	Core Standards	21084	AMD	07/02/98	98-10/120
R501-2	Core Standards	21647	NSC	12/01/98	Not Printed
R501-3	Categorical Standards	21655	NSC	12/01/98	Not Printed
R501-7	Rules for Child Placing Agencies	21415	EMR	09/02/98	98-19/94
R501-7	Rules for Child Placing Agencies	21391	AMD	10/16/98	98-18/21
R501-12	Foster Care Core Standards	21258	AMD	08/17/98	98-14/66
R501-14	Criminal Background Screening	21081	EMR	05/04/98	98-10/140
R501-14	Criminal Background Screening	21085	AMD	06/16/98	98-10/121
R501-15	Utah Social Services Delivery System Data Bases Screening	21039	EXD	05/01/98	98-10/168
R501-17	Adult Foster Care Standards	20179	NEW	03/15/98	97-22/24
R501-17	Adult Foster Care Standards	20286	NSC	03/15/98	Not Printed
R501-17	Adult Foster Care Standards	20880	NSC	03/17/98	Not Printed
R501-18	Abuse Background Screening	21082	EMR	05/04/98	98-10/145
R501-18	Abuse Background Screening	21086	NEW	06/16/98	98-10/126
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R503-5	Client Notice and Client Hearings	20895	5YR	03/13/98	98-7/76
R503-5	Client Notice and Client Hearings	20896	REP	05/02/98	98-7/37
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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

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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
R510-400	Home and Community-Based Alternative Services Policy and Procedures	20644	5YR	01/08/98	98-3/103
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R512-2	Child Welfare/Aid to Families with Dependent Children (AFDC) Foster Care/Adoption	20245	AMD	02/01/98	97-24/90
R512-3	Procedures for Establishing Policy	21466	NEW	11/05/98	98-19/77
R512-25	Child Protective Services Notification and Due Process	21226	EMR	06/16/98	98-14/99
R512-25	Child Protective Services Notification and Due Process	21336	NEW	09/15/98	98-16/26
R512-31	Foster Parent Due Process	20288	AMD	04/01/98	97-24/91
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R525-1	Patient Records	20913	EXD	03/15/98	98-7/80
R525-1	Medical Records	20919	NEW	05/25/98	98-7/40
R525-2	Patient Rights	20914	EXD	03/15/98	98-7/80
R525-2	Patient Rights	20920	NEW	05/25/98	98-7/41
R525-3	Treatment Procedures	20915	EXD	03/15/98	98-7/80
R525-3	Medication Treatment of Patients	20921	NEW	05/25/98	98-7/42
R525-4	Patient Management	20916	EXD	03/15/98	98-7/80
R525-4	Visitors	20888	NEW	05/25/98	98-7/43
R525-5	Patient Services	20917	EXD	03/15/98	98-7/80
R525-5	Background Checks	20890	NEW	05/25/98	98-7/43
R525-6	Weapons at the Utah State Hospital	20891	NEW	see CPR	98-7/44
R525-6	Weapons at the Utah State Hospital	20891	CPR	08/15/98	98-14/93
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R527-5	Release of Information	20240	AMD	01/05/98	97-23/83
R527-39	Applicant/Recipient Cooperation	20522	NEW	02/05/98	98-1/67
R527-56	In-Kind Support	20978	5YR	04/13/98	98-9/69
R527-56	In-Kind Support	20979	NSC	04/20/98	Not Printed
R527-100	Uniform Interstate Family Support Act	21018	NEW	06/16/98	98-10/129
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R527-201	Medical Support Services	21352	AMD	see CPR	98-17/34
R527-201	Medical Support Services	21352	CPR	10/16/98	98-18/38
R527-201	Medical Support Services	21638	AMD	12/17/98	98-22/93

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R527-300	Income Withholding	20723	AMD	03/18/98	98-4/77
R527-300	Income Withholding	21006	AMD	06/16/98	98-10/130
R527-300	Income Withholding	21488	NSC	10/22/98	Not Printed
R527-301	Non IV-D Income Withholding	20724	AMD	03/18/98	98-4/80
R527-301	Non IV-D Income Withholding	21427	5YR	09/04/98	98-19/106
R527-305	High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases	21017	NEW	06/16/98	98-10/131
R527-430	Administrative Notice of Lien-Levy Procedures	20523	NEW	02/05/98	98-1/68
R527-475	State Tax Refund Intercept	20725	AMD	03/18/98	98-4/82
R527-550	Assessment	20520	AMD	02/11/98	98-1/70
R527-928	Lost Checks	20518	AMD	02/17/98	98-1/71
R527-928	Lost Checks	21530	NSC	10/23/98	Not Printed
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R590-79-4	Definitions	20815	AMD	05/01/98	98-6/39
R590-94	Rule Permitting Smoker/Nonsmoker Mortality Tables For Use In Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	21338	5YR	07/31/98	98-16/90
R590-124	Loss Information Rule	20816	5YR	02/26/98	98-6/78
R590-125	Bail Bond Insurance Exemption	21340	REP	09/25/98	98-16/29
R590-128	Unfair Discrimination Based Solely on the Failure to Maintain Automobile Insurance	20817	AMD	see CPR	98-6/41
R590-128	Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised)	20817	CPR	06/16/98	98-10/138
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R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	18730	CPR (First)	see CPR (Second)	97-15/102
R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	18730	CPR (Second)	03/01/98	97-22/105
R590-132-3	Rule	20590	NSC	03/01/98	Not Printed
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R590-187	Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance	21204	CPR	09/25/98	98-16/79
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R612-2-3	Filings	21451	AMD	11/03/98	98-19/80
R612-2-5	Regulation of Medical Practitioner Fees	21452	AMD	11/03/98	98-19/82
R612-2-5	Regulation of Medical Practitioner Fees	21662	NSC	12/01/98	Not Printed
R612-2-24	Review of Medical Payments	21537	NSC	10/22/98	Not Printed
R612-3	Worker's Compensation Rules - Self-Insurance	21217	5YR	06/15/98	98-13/33
R612-4	Premium Rates	21534	AMD	12/04/98	98-21/59
R612-5	Employee Leasing Company Worker's Compensation Insurance Policy Endorsements	21218	5YR	06/15/98	98-13/33
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R614-1-4	Incorporation of Federal Standards	20835	AMD	05/04/98	98-7/45
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R614-2-3	Drilling Industry -- General Safety and Health Provisions	21545	AMD	12/04/98	98-21/64
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R614-6-2	Window Cleaning	21549	AMD	12/04/98	98-21/72
R614-6-4	Industrial Railroads	21550	AMD	12/04/98	98-21/73
R614-6-7	Hot Metallurgical Operations	21094	NSC	05/22/98	Not Printed
R614-7-1	Roofing, Tar-Asphalt Operations	21551	AMD	12/04/98	98-21/78
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R641-102	Appearances and Representations	21043	5YR	05/01/98	98-10/159
R641-103	Intervention	21044	5YR	05/01/98	98-10/160
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R641-106	Notice and Service	21047	5YR	05/01/98	98-10/161
R641-107	Prehearing Conference	21048	5YR	05/01/98	98-10/161
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R645-102	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction	21327	5YR	07/27/98	98-16/91
R645-301-500	Engineering	20190	AMD	03/15/98	97-22/38
R645-301-500	Engineering	21663	NSC	12/01/98	Not Printed
R645-301-700	Hydrology	20191	AMD	03/15/98	97-22/59
R645-301-700	Hydrology	21334	AMD	09/30/98	98-16/36
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R651-206	Carrying Passengers for Hire	21493	AMD	12/01/98	98-20/17
R651-211	Assigned Numbers	21407	NSC	10/20/98	Not Printed

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R651-217	Fire Extinguishers	21411	NSC	10/20/98	Not Printed
R651-219	Additional Safety Equipment	21412	NSC	10/20/98	Not Printed
R651-224	Towed Devices	21494	AMD	12/01/98	98-20/20
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R651-227	Boating Safety Course Fees	21495	NEW	12/01/98	98-20/21
R651-301	State Recreation Fiscal Assistance Programs	21315	5YR	07/21/98	98-16/94
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R651-611	Fee Schedule	20793	AMD	07/06/98	98-6/44
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R652-7	Public Petitions for Declaratory Orders	21508	5YR	10/02/98	98-21/100
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R653-4	Investigation Account	20694	AMD	03/18/98	98-4/88
R653-5	Cloud Seeding	20593	AMD	02/18/98	98-2/60
R653-5	Cloud Seeding	20791	NSC	03/05/98	Not Printed
R653-7	Administrative Procedures for Informal Proceedings	20554	AMD	02/18/98	98-2/63
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R653-8	Flaming Gorge Water Right Segregation	20936	NSC	03/30/98	Not Printed
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R657-5	Taking Big Game	21185	AMD	07/16/98	98-12/14
R657-5	Taking Big Game	21414	AMD	10/16/98	98-18/23
R657-6	Taking Upland Game	21238	AMD	08/19/98	98-14/74
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	21400	AMD	10/16/98	98-18/26
R657-10	Taking Cougar	20928	EMR	03/19/98	98-8/57
R657-10	Taking Cougar	21401	AMD	10/16/98	98-18/29
R657-13	Taking Fish and Crayfish	21498	AMD	12/28/98	98-20/21
R657-17	Lifetime Hunting and Fishing License	21718	NSC	12/30/98	Not Printed
R657-33	Taking Bear	20929	EMR	03/19/98	98-8/58
R657-33	Taking Bear	20938	5YR	03/24/98	98-8/65

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R657-34	Procedures for Confirmation of Ordinances on Hunting Closures	21500	5YR	10/01/98	98-20/38
R657-34	Procedures for Confirmation of Ordinances on Hunting Closures	21499	AMD	11/19/98	98-20/25
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
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R657-42	Big Game Hunting Permit Exchanges	21240	AMD	08/19/98	98-14/81
R657-43	General Season Landowner Deer Permits	20700	AMD	03/18/98	98-4/90
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R671-312	Commutation Hearings for Death Penalty Cases	21312	EMR	07/17/98	98-16/82
R671-312	Commutation Hearings for Death Penalty Cases	21313	NEW	09/15/98	98-16/49
R671-312	Commutation Hearings for Death Penalty Cases	21428	NSC	09/15/98	Not Printed
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R671-317	Interim Decisions	21201	NSC	06/17/98	Not Printed
R671-401	Parole Incident Reports	21597	REP	01/01/99	98-22/95
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R671-402	Special Conditions of Parole	21202	NSC	06/17/98	Not Printed
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R671-503	Prerevocation Hearings	20475	AMD	02/18/98	98-1/95
R671-503	Prerevocation Hearings	21600	REP	01/01/99	98-22/97
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R671-504	Timeliness of Parole Revocation Hearings	21601	REP	01/01/99	98-22/98
R671-505	Parole Revocation Hearings	20479	AMD	02/18/98	98-1/96
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R671-514	Waiver and Pleas of Guilt	21611	NEW	01/01/99	98-22/106
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R710-6	Liquefied Petroleum Gas Rules	21292	AMD	09/01/98	98-15/49
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R728-403	Qualifications For Admission To Certified Peace Officer Training Academies	20784	NSC	02/23/98	Not Printed
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R746-360	Universal Public Telecommunications Service Support Fund	20956	EMR	03/31/98	98-8/59
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R884-24P-53	1998 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	21526	EMR	10/06/98	98-21/92
R884-24P-53	1999 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515	21557	AMD	12/18/98	98-21/88
R884-24P-58	One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924	20203	AMD	02/24/98	97-23/96
R884-24P-59	One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924	20204	AMD	02/24/98	97-23/96

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R884-24P-60	Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1	21222	AMD	08/11/98	98-13/25
R884-24P-60	Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1	21502	AMD	12/18/98	98-20/27
R884-24P-61	1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405	21223	AMD	08/11/98	98-13/26
R884-24P-61	1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405	21503	AMD	12/18/98	98-20/29
R884-24P-62	Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201	21640	AMD	12/18/98	98-22/129

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Administration

R907-40	External Relations	21661	5YR	11/10/98	98-23/50
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Motor Carrier

R909-1	Safety Regulations for Motor Carriers	20276	AMD	01/15/98	97-24/111
R909-1	Safety Regulations for Motor Carriers	20827	AMD	05/01/98	98-6/62
R909-1	Safety Regulations for Motor Carriers	21089	AMD	06/16/98	98-10/132
R909-1	Safety Regulations for Motor Carriers	21281	AMD	09/01/98	98-15/69
R909-1	Safety Regulations for Motor Carriers	21497	NSC	10/22/98	Not Printed
R909-4-11	Maximum Towing and Storage Rates	20271	AMD	02/27/98	97-24/112
R909-13	Standards for Utah School Buses	21571	REP	01/01/99	98-22/133
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	20676	NSC	01/21/98	Not Printed
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	20918	AMD	05/28/98	98-7/67
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	21282	AMD	09/01/98	98-15/70

Motor Carrier, Ports of Entry

R912-4	Limitation of Special Permit Vehicles in Provo Canyon. Legal and Permitted Vehicles	20646	5YR	01/12/98	98-3/104
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Operations, Maintenance

R918-2-3	Criteria	20628	NSC	01/21/98	Not Printed
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<u>Operations, Traffic and Safety</u>					
R920-5-6	On Premise School Bus Loading Zones	20730	AMD	04/01/98	98-5/47
R920-7	Public Safety Program Signing	21489	NEW	12/02/98	98-20/31
R920-50	Tramway Operations Safety Rules	20807	NSC	03/05/98	Not Printed
R920-50	Tramway Operations Safety Rules	21347	AMD	10/02/98	98-17/51
R920-50	Tramways Operations Safety Rules	21476	NSC	10/21/98	Not Printed
<u>Program Development</u>					
R926-2	Evaluation of Proposed Additions to the State Highway System	20942	AMD	05/29/98	98-8/47
<u>Preconstruction</u>					
R930-1	Installation of New Mailboxes and Correction of Nonconforming Mailboxes	20881	5YR	03/11/98	98-7/78
R930-1	Installation of New Mailboxes and Correction of Nonconforming Mailboxes	20882	NSC	03/17/98	Not Printed
R930-5	Implementation of Agreements, Participation, Maintenance and Public Notice Responsibilities Relating to Railway-Highway Projects	20544	R&R	03/11/98	98-2/69
<u>Preconstruction, Right-of-Way Acquisition</u>					
R933-4	Bus Shelters	21177	NEW	07/16/98	98-12/21
WORKERS' COMPENSATION FUND					
<u>Administration</u>					
R980-1	Workers' Compensation Fund of Utah Dispute Resolution	21214	REP	08/07/98	98-13/28
WORKFORCE SERVICES					
<u>Administration</u>					
R982-301	Councils	20927	AMD	05/18/98	98-8/48
R982-301	Councils	21577	NSC	11/12/98	Not Printed
R982-401	JTPA Fiscal Procedures	21251	5YR	06/29/98	98-14/105
R982-501	JTPA Procurement/Property Management Procedures	21252	5YR	06/29/98	98-14/105
<u>Employment Development</u>					
R986-211	Financial Assistance General Provisions	20845	NSC	04/01/98	Not Printed
R986-212	Financial Assistance Coverage and Conditions of Eligibility	20846	NSC	04/01/98	Not Printed
R986-213	Financial Assistance Need and Amount of Assistance	20847	NSC	04/01/98	Not Printed
R986-214	Financial Assistance Applications, Redeterminations, and Change Reporting	20848	NSC	04/01/98	Not Printed
R986-215	Financial Assistance Verification and Safeguarding Requirements	20849	AMD	05/18/98	98-7/68
R986-216	Financial Assistance Emergency Work Program (EWP)	20850	NSC	04/01/98	Not Printed

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R986-218	Financial Assistance General Assistance/Self-Sufficiency Program	20851	NSC	04/01/98	Not Printed
R986-219	Financial Assistance Notice, Hearings, and Conciliation	20852	NSC	04/01/98	Not Printed
R986-220	Financial Assistance Tables	20853	NSC	04/01/98	Not Printed
R986-220	Financial Assistance Tables	21013	AMD	06/25/98	98-10/134
R986-221	Demonstration Programs	20742	5YR	02/06/98	98-5/69
R986-221	Demonstration Programs	20854	NSC	04/01/98	Not Printed
R986-222	Adoption Assistance Program	20855	NSC	04/01/98	Not Printed
R986-301	Medicaid General Provisions	20743	5YR	02/06/98	98-5/70
R986-301	Medicaid General Provisions	20769	AMD	04/01/98	98-5/48
R986-302	Eligibility Requirements	20224	AMD	01/02/98	97-23/97
R986-302	Eligibility Requirements	20744	5YR	02/06/98	98-5/70
R986-303	Coverage Groups	20745	5YR	02/06/98	98-5/71
R986-303-301	A, B, and D Medicaid and A, B, and D Institutional Medicaid Coverage Groups	20319	AMD	02/03/98	98-1/116
R986-304	Income and Budgeting	20746	5YR	02/06/98	98-5/71
R986-304	Income and Budgeting	20738	EMR	02/12/98	98-5/60
R986-304	Income and Budgeting	20739	AMD	04/01/98	98-5/49
R986-305	Resources	20747	5YR	02/06/98	98-5/72
R986-305	Resources	20726	EMR	02/12/98	98-4/123
R986-305	Resources	20770	AMD	04/01/98	98-5/55
R986-305	Resources	20675	AMD	05/28/98	98-3/84
R986-306	Program Benefits	20748	5YR	02/06/98	98-5/72
R986-306	Program Benefits	20777	AMD	04/01/98	98-5/57
R986-307	Eligibility Determination and Redetermination	20749	5YR	02/06/98	98-5/73
R986-307	Eligibility Determination and Redetermination	20774	AMD	04/01/98	98-5/58
R986-308	Record Management	20750	5YR	02/06/98	98-5/73
R986-309	Utah Medical Assistance Program (UMAP)	20751	5YR	02/06/98	98-5/74
R986-309-901	UMAP General Eligibility Requirements	20732	EMR	02/12/98	98-5/62
R986-309-901	UMAP General Eligibility Requirements	20960	AMD	05/18/98	98-8/50
R986-310	Demonstration Programs	20752	5YR	02/06/98	98-5/74
R986-411	General Provisions	20856	NSC	04/01/98	Not Printed
R986-412	Conditions of Eligibility	20206	AMD	01/02/98	97-23/98
R986-412	Conditions of Eligibility	20857	NSC	04/01/98	Not Printed
R986-413	Program Standards	20858	NSC	04/01/98	Not Printed
R986-413	Program Standards	21496	EMR	10/01/98	98-20/35
R986-414	Income	20207	AMD	01/02/98	97-23/99
R986-414	Income	20859	NSC	04/01/98	Not Printed
R986-414	Income	21419	EMR	10/01/98	98-19/97
R986-415	Assets	20860	NSC	04/01/98	Not Printed
R986-416	Benefits	20861	NSC	04/01/98	Not Printed
R986-417	Documentation	20208	AMD	see CPR	97-23/100
R986-417	Documentation	20208	CPR	02/03/98	98-1/120
R986-417	Documentation	20862	NSC	04/01/98	Not Printed
R986-417	Documentation	21420	EMR	10/01/98	98-19/98

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R986-419	Income Limits	20209	AMD	01/02/98	97-23/102
R986-419	Income Limits	20864	NSC	04/01/98	Not Printed
R986-419	Income Limits	21421	EMR	10/01/98	98-19/99
R986-420	Maximum Allotments	20210	AMD	01/02/98	97-23/102
R986-420	Maximum Allotments	20865	NSC	04/01/98	Not Printed
R986-420	Maximum Allotments	21422	EMR	10/01/98	98-19/101
R986-421	Demonstration Programs	20211	AMD	01/02/98	97-23/103
R986-421	Demonstration Programs	20753	5YR	02/06/98	98-5/75
R986-421	Demonstration Programs	20866	NSC	04/01/98	Not Printed
R986-421	Demonstration Programs	21423	EMR	10/01/98	98-19/102
R986-501	Displaced Homemaker Program	20867	NSC	04/01/98	Not Printed
R986-601	Authority and Definitions for Programs Authorized under JTPA	21253	5YR	06/29/98	98-14/106
R986-602	General Administrative Provisions	20868	NSC	04/01/98	Not Printed
R986-602	General Administrative Provisions	21254	5YR	06/29/98	98-14/106
R986-603	Participant Data System Procedures	20869	NSC	04/01/98	Not Printed
R986-603	Participant Data System Procedures	21255	5YR	06/29/98	98-14/106
R986-701	Child Care Assistance General Provisions	20754	5YR	02/06/98	98-5/75
R986-701	Child Care Assistance General Provisions	20870	NSC	04/01/98	Not Printed
R986-701	Child Care Assistance General Provisions	21283	AMD	10/01/98	98-15/71
R986-702	Conditions of Eligibility and Client Payment Amount	20755	5YR	02/06/98	98-5/76
R986-702	Conditions of Eligibility and Client Payment Amount	20871	NSC	04/01/98	Not Printed
R986-702	Conditions of Eligibility and Client Payment Amount	21284	AMD	10/01/98	98-15/73
R986-703	Child Care Programs	20756	5YR	02/06/98	98-5/77
R986-703	Child Care Programs	20872	NSC	04/01/98	Not Printed
R986-703	Child Care Programs	21285	AMD	10/01/98	98-15/74
R986-704	Income Rules and Eligibility Calculations	20757	5YR	02/06/98	98-5/77
R986-704	Income Rules and Eligibility Calculations	20873	NSC	04/01/98	Not Printed
R986-705	Resources	20758	5YR	02/06/98	98-5/78
R986-705	Resources	20874	NSC	04/01/98	Not Printed
R986-706	Provider Payment and Contracting	20759	5YR	02/06/98	98-5/78
R986-706	Provider Payment and Contracting	20875	NSC	04/01/98	Not Printed
R986-706	Provider Payment and Contracting	21286	AMD	10/01/98	98-15/75
R986-707	Eligibility	20760	5YR	02/06/98	98-5/79
R986-707	Eligibility	20876	NSC	04/01/98	Not Printed
R986-707	Eligibility	21287	AMD	10/01/98	98-15/77
R986-709	Cash Out Child Care Program	20877	NSC	04/01/98	Not Printed
R986-709	Cash Out Child Care Program	21288	REP	10/01/98	98-15/78

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<u>Employment Development (Changed to Health, Health Care Financing, Coverage and Reimbursement Policy -- 06/01/98--these rules only)</u>					
R986-301 (Changed to R414-301)	Medicaid General Provisions	21164	NSC	06/01/98	Not Printed
R986-302 (Changed to R414-302)	Eligibility Requirements	21165	NSC	06/01/98	Not Printed
R986-303 (Changed to R414-303)	Coverage Groups	21166	NSC	06/01/98	Not Printed
R986-304 (Changed to R414-304)	Income and Budgeting	21167	NSC	06/01/98	Not Printed
R986-305 (Changed to R414-305)	Resources	21168	NSC	06/01/98	Not Printed
R986-306 (Changed to R414-306)	Program Benefits	21169	NSC	06/01/98	Not Printed
R986-307 (Changed to R414-307)	Eligibility Determination and Redetermination	21170	NSC	06/01/98	Not Printed
R986-308 (Changed to R414-308)	Record Management	21171	NSC	06/01/98	Not Printed
R986-309 (Changed to R414-309)	Utah Medical Assistance Program (UMAP)	21172	NSC	06/01/98	Not Printed
R986-310 (Changed to R414-310)	Demonstration Programs	21173	NSC	06/01/98	Not Printed
<u>Workforce Information and Payment Services</u>					
R994-201	Definition of Terms in Employment Security Act	21178	5YR	05/29/98	98-12/38
R994-202	Employing Units	21179	5YR	05/29/98	98-12/38
R994-207	Unemployment	21578	AMD	12/16/98	98-22/137
R994-208	Definition of Wages	21180	5YR	05/29/98	98-12/39
R994-306	Charging Benefit Costs to Employers	21209	5YR	06/12/98	98-13/34
R994-307	Social Costs -- Relief of Charges	21210	5YR	06/12/98	98-13/34
R994-315	Centralized New Hire Registry Reporting	21012	NEW	06/25/98	98-10/135
R994-508	Appeal Procedures	21211	5YR	06/12/98	98-13/35
R994-600	Dislocated Workers	21181	5YR	05/29/98	98-12/39