

NOTICE OF 120-DAY (EMERGENCY) RULE

- The agency identified below in box 1 provides notice of a 120-day (emergency) rule pursuant to Utah Code Section 63G-3-304.
- Please address questions regarding information on this notice to the agency.

**Rule Information**

DAR file no: 40318 Date filed: 04/15/2016 09:14 AM  
 State Admin Rule Filing Key: 157395  
 Utah Admin. Code ref. (R no.): R414-505

**Agency Information**

1. Agency: Health - Health Care Financing, Coverage and Reimbursement Policy  
 Room no.:  
 Building: CANNON HEALTH BLDG  
 Street address 1: 288 N 1460 W  
 Street address 2:  
 City, state, zip: SALT LAKE CITY UT 84116-3231  
 Mailing address 1: PO BOX 143102  
 Mailing address 2:  
 City, state, zip: SALT LAKE CITY UT 84114-3102

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Craig Devashrayee	801-538-6641	801-538-6099	cdevashrayee@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

**Rule Title**

2. Title of rule or section (catchline):  
 Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program

**Effective Date**

3. Effective Date (mm/dd/yyyy): 04/15/2016

**Rule Purpose**

4. Purpose of the rule or reason for the change:  
 The purpose of this rule is to ensure agency compliance with reporting requirements found in 42 CFR 433.74, and to define participation requirements in the Nursing Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This emergency rule filing supersedes the emergency filing for Rule R414-505, which the agency made on 04/06/2016.

**Rule Summary**

5. Summary of the rule or change:  
 This rule specifies source-of-seed payment requirements that comply with 42 CFR 433.74(c). It also specifies how to notify the Division of Medicaid and Health Financing (DMHF) with the intent to participate in the NF NSGO UPL program, and includes participation requirements.

6. Regular rulemaking procedures would:

- cause an imminent peril to the public health, safety, or welfare
- cause an imminent budget reduction because of budget restraints or federal requirements
- place the agency in violation of federal or state law

Justification: This rule is necessary to comply with 42 CFR 433.74(c). The Department needs the rule to specify source-of-seed payments for the program.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected:  No  Yes

There is no impact to the state budget because this rule only complies with reporting requirements found in the Code of Federal Regulations (CFR). It neither affects Medicaid services nor provider reimbursement.

B) Local government:

Affected:  No  Yes

There is no impact to local governments because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

C) Small businesses:

Affected:  No  Yes

("small business" means a business employing fewer than 50 persons)

There is no impact to small businesses because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

D) Persons other than small businesses, businesses, or local government entities:

Affected:  No  Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

There is no impact to Medicaid providers and to Medicaid recipients because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

Compliance Cost Information

8. Compliance costs for affected persons:

There is no impact to a single Medicaid provider or to Medicaid recipient because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

There is no fiscal impact on business because the rule does not change any existing requirements or add any additional requirements for Medicaid providers or participants.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

Section 26-1-5, 42 CFR 433.74(c), Section 26-18-3

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials

incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Indexing Information

12. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
- Medicaid

File Information

13. Attach an RTF document containing the text of this rule change (filename):
- There is a document associated with this rule filing.

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.

Agency Authorization

Agency head or designee, and title: Joseph Miner  
Executive Director

Date (mm/dd/yyyy): 04/14/2016

Control Panel

DAR Control Panel

Control Name	Currently	Change To
Lock Status	Default	Force On
Filing Status	New	New
Text Status	New	New
Form Status	Corrected	Corrected
Incorp Status	New	New

DAR Notes:  
NO DAR NOTES

Additional Links for DAR  
Effective Note:

Title Note:

Invalidated Reason:

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

**R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.**

**R414-505-1. Introduction and Authority.**

This rule defines the participation requirements in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule is authorized under Attachment 4.19-D of the Utah Medicaid State Plan, and by Sections 26-1-5 and 26-18-3.

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

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

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

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

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

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

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

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

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

This section applies to all nursing care facilities that, as of the effective date of this rule, have not had a state licensing determination of approval by state licensing for a change of ownership for Medicaid certification.

(1) Required application. Before an NSGO nursing care facility may receive supplemental payments, the appropriate NSGE must certify certain facts, representations, and assurances regarding program requirements. The NSGE must certify the required facts using the "NF NSGO UPL Program Notice of Participation Form", prescribed by the Medicaid agency.

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

Via United States Postal Service:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

P.O. Box 143102

Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

288 North 1460 West

Salt Lake City, UT 84116-3231

(3) The "NSGO NF UPL Program Notice of Participation Form" must be complete and accurate or it will be returned. Incomplete forms shall not be considered as providing notice of intent to participate.

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

(1)(a) The nursing care facility must be owned by an NSGE.

(b) Prior to the Medicaid agency initiating a contract, the nursing care facility owner shall provide appropriate legal evidence, as determined by the Medicaid agency, demonstrating the nursing care facility is owned by an NSGE.

(c) A nursing care facility participating in this supplemental payment program must notify the Reimbursement Unit within the Bureau of Coverage and Reimbursement Policy, at the address noted above, of changes in ownership that may affect the nursing care facility's continued eligibility within 14 calendar days after such change.

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

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

(b) The following applies to all nursing care facilities that, as of the effective date of this rule, have not had a state licensing determination of approval by state licensing for a change of ownership for Medicaid certification.

The effective date for a NF NSGO UPL contract for a nursing care facility to participate in the NF NSGO UPL supplemental payments shall be the latter of the following dates:

(i) The effective date of the Change of Ownership (CHOW);

(ii) The postmark date of the Notice of Intent to Participate as noted in Section 4;

(iii) The first date of the calendar quarter in which the determination to approve the CHOW was completed; or

(iv) The first date of the calendar quarter in which the Medicaid provider enrollment was completed.

(4) A nursing care facility may not receive monies from the NF NSGO UPL supplemental payment program until a contract is in effect.

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

(6)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer (IGT) Agreements of public funds from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.

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

**R414-505-6. Intergovernmental Transfer (IGT) Certification.**

In order to comply with 42 CFR 433.74, with its IGT, using the "IGT Certification Form" prescribed by the Medicaid agency, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The information provided as supporting documentation shall furnish a detailed description and legal basis for each IGT being reported.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: New**

**Notice of Continuation: New**

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