R51. Agriculture and Food, Administration.
R51-1. Public Petitions for Declaratory Rulings.
R51-1-1. Authority.

This rule is promulgated under the authority of Section 63-46a-3, and Section 63-46b-21, and provides the procedures for submission, review, and disposition of petitions for agency declaratory rulings on the applicability of statutes, rules, and orders governing or issued by the Department of Agriculture and Food.

R51-1-2. Definitions.

A. Terms used in this rule are defined in Section 63-46a-2, except "Agency" means The Utah Department of Agriculture and Food.

B. In addition:

1. "Declaratory ruling" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order; and

2. "Applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

R51-1-3. Petition Procedure.

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the Commissioner of Agriculture and Food.

C. The Department of Agriculture and Food shall stamp the petition with the date of receipt.

R51-1-4. Petition Form.

The petition shall:

1. be clearly designated as a request for an agency declaratory ruling;

2. identify the statute, rule, or order to be reviewed;

3. describe the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular working hours; and

6. be signed by the petitioner.

R51-1-5. Petition Review and Disposition.

A. The Commissioner or designee shall:

1. review and consider the petition;

2. prepare a declaratory ruling stating:

a. the applicability or non-applicability of the statute, rule, or order at issue;

b. the reason for the applicability or non-applicability of the statute, rule, or order; and

c. any requirements imposed on the agency, the petitioner, or any person as a result of the ruling.

B. The Department may:

1. interview the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take any action the agency, in its judgment, deems necessary to provide the petition adequate review and due consideration.

C. The Department of Agriculture and Food shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the ruling by certified mail, or shall send the petitioner notice of progress in preparing the ruling, within 30 days of receipt of the petition.

D. The Department of Agriculture and Food shall retain the petition and a copy of the declaratory ruling in its records.

KEY: administrative procedure

1987	**63-46a-3**
Notice of Continuation March 30, 2001	**63-46b-21**

R58. Agriculture and Food, Animal Industry.
R58-2. Diseases, Inspections and Quarantines.
R58-2-1. Authority.

Promulgated Under the Authority of Sections 4-31-15 and 4-31-17 and Subsection 4-2-2(1)(c)(ii).

R58-2-2. Reportable and Quarantinable Animal Diseases.

A. Reporting of Diseases. It shall be the responsibility of veterinary diagnostic laboratories, veterinary practitioners, livestock inspectors, and livestock owners to report immediately by phone or written statement to the Department of Agriculture and Food any of the diseases listed on the Utah Department of Agriculture and Food Reportable Disease list, available at the Utah Department of Agriculture and Food, Division of Animal Health, PO Box 146500, 350 North Redwood Road, Salt Lake City, UT 84114-6500.

1. All swine moving within the State of Utah shall be identifiable to determine the farm of origin as per 9 CFR,1,71.19, January 1, 1997, edition which is hereby adopted and is incorporated by reference within this rule.

B. Quarantines. The Department of Agriculture and Food or its agent may issue quarantines on:

1. Any animal infected with diseases listed on the reportable disease list or any infectious or dangerous entity which is determined to be a threat to other animals or humans.

2. Any animal which it believes may jeopardize the health of other animals, or humans.

3. Any area within the State of Utah to prevent the spread of infectious or contagious diseases.

a. Quarantines shall be deemed issued to owners or caretakers of animals affected with or exposed to infectious, contagious, or communicable diseases by serving an official notice of quarantine to the owner or caretaker in person, by phone, by public meetings, or by registered mail to his last known address.

b. On and after the effective date of quarantine no animals shall be moved or allowed to be moved from or onto the quarantined premises without the owner or caretaker of the quarantined livestock having first obtained a written permit from the Utah Department of Agriculture and Food or its authorized agent to move the animals.

c. Quarantines shall be released upon compliance with Section 4-31-17; as well as with 9 CFR 1.1.b, January 1, 1997, edition; and the Utah Health Code Sections 26-6, 19-4 and 19-5.

KEY: quarantines

August 15, 1997	**4-31-15**
Notice of Continuation June 19, 1997	**4-31-17**
	4-2-2(1)(c)(ii)

R58. Agriculture and Food, Animal Industry.
R58-11. Slaughter of Livestock.
R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

R58-11-2. Definitions.

A. "Department" - Utah Department of Agriculture and Food.

B. "Commissioner" - Commissioner of Agriculture and Food or his representative.

C. "Business" - An individual or organization receiving remuneration for services.

D. "Food" - Product intended for human consumption.

E. "Owner" - A person holding legal title to the animal.

F. "Farm Custom Slaughtering" - The killing, skinning and preparing of livestock by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal. Unless express prior permission is given by a department representative the place of slaughter shall be on the animal's owner's property.

G. "Permit" - Official written permission by the Utah Department of Agriculture and Food to do farm custom slaughtering.

H. "Permittee" - A person who possesses a valid farm custom slaughtering permit.

I. "Immediate Family" - Those living together in a single dwelling unit and/or their sons and daughters.

J. "Property Owner" - A person having legal title to or who is a tenant operator, or lessee of such property.

K. "Adulterated" - As outlined in 9 C.F.R 301.2(c); 381.1(4), January 1, 1996 edition.

L. "Misbranded" - as outlined in 9 C.F.R. 301.2(ii)(1)(2)(6)(12), Sections 316.6 and 317.16; 381.1(31), January 1, 1996 edition.

M. "Detain or Embargo" - Holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

N. "Bill of Sale for Hides" - A hide release or some other formal means of transferring the title of hides.

O. "Emergency Slaughter" - Slaughtering of injured animals without first having obtained a Custom Slaughter-Release Permit from a Department Brand Inspector (providing the animal owner obtains a Custom Slaughter-Release Permit and the Farm Custom Slaughter Tag from a Department Brand Inspector within two working days following such slaughter. Further, the permittee must notify the Division of Meat Inspection within two working days following such slaughter).

P. "Custom Slaughter-Release Permit" - A permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered. The original copy will be retained by the brand inspector. Copies will accompany the farm custom slaughter tag. A copy will be sent to the Department by the permittee with the Farm Custom Slaughter Tags and a copy will serve as the bona fide bill of sale for the hide.

R58-11-3. Registration and Permit Issuance.

A. Farm Custom Slaughtering Permit.

1. Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a permit will be made on a department form for a Farm Custom Slaughter Permit. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Permits will be valid for the calendar year (January 1 to December 31). Each permittee will be required to re-apply for a permit every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

2. Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has completed and signed the registration form.

3. A fee of $50 must be paid prior to permit issuance.

R58-11-4. Equipment and Sanitation Requirements.

A. Unit of vehicle and equipment used for farm custom slaughtering:

1. The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

2. A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

3. Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

a. A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

4. A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

5. A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be done with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

6. Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

7. Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

8. Approved denaturing agent shall be available for use during all processing times. Denaturing shall be accomplished as outlined in 9 C.F.R. 325.13, January 1, 1996 edition.

9. When a permittee transports uninspected meat to an establishment for processing, he shall:

a. do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and

b. transport the meat in such a way that it is properly protected; and

c. deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

10. Sanitation.

1. Unit or Vehicle.

a. The unit or vehicle must be thoroughly cleaned after each slaughter.

b. Non-related items shall not be on or in the unit or vehicle at time of slaughter.

2. Equipment.

a. All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

b. Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

3. Inedibles.

a. Inedibles shall be placed in designated containers and be properly denatured.

b. Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

4. Personal Cleanliness.

a. Adequate care shall be taken to prevent contamination of the carcasses from perspiration, hair, cosmetics, medications and similar substances.

b. Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

c. No permittee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

d. Hand wash facilities shall be used as needed to maintain good personal hygiene.

R58-11-5. Slaughtering Procedures.

A. Slaughter Area - Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

B. Humane Slaughter - Slaughtered animals shall be rendered insensible to pain by a single blow, or gun shot or electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

C. Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

D. Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

E. Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

F. Carcass washing - Hair, dirt and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

R58-11-6. Identification and Records.

A. Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any licensed slaughter (including permittees) to slaughter livestock which do not have a Brand Inspection Certificate at time of slaughter.

1. Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection Certificate (Custom Slaughter-Release Permit).

2. Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of $1 each. These tags will be required on beef, pork, and sheep.

B. Records.

1. The Custom Slaughter-Release Permit will record the following information:

a. An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold. (Signature).

b. In addition to this affidavit, the following information will be recorded:

(1) date;

(2) owner's name, address and telephone number;

(3) animal description including brands and marks;

(4) Farm Custom Slaughter tag number.

2. The Farm Custom Slaughter tag must record the following information:

a. date;

b. owner's name, address and telephone number;

c. location of slaughter;

d. name of permittee;

e. permittee permit number; and

f. carcass destination.

3. Prior to slaughter the permittee shall:

a. Prepare the Farm Custom Slaughter tag with complete and accurate information;

(1) One tag shall stay in the permit holder's file for at least one year.

(2) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the permittee.

(3) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height;

further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(4) Hide Purchase - Permittees receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

R58-11-7. Enforcement Procedures.

A. Livestock Slaughtering Permit:

1. It shall be unlawful for any person to slaughter or assist in slaughtering livestock as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering Permit issued to him by the Department.

2. Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a permit.

3. Permit may be renewed annually and shall expire on the 31st of December of each year.

B. Suspension of permit - permit may be suspended whenever:

1. The Department has reason to believe that an eminent public health hazard exists;

2. The permit holder has interfered with the Department in the performance of its duties;

3. The permittee violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.

C. Warning letter - In instances where a violation may have occurred a warning letter may be sent to the permittee which specifies the violations and affords the holder a reasonable opportunity to correct them.

D. Hearings - Whenever a permittee has been given notice by the Department that suspected violations may have occurred or when a permit is suspended he may have an opportunity for a hearing to state his views before the Department.

E. Reinstatement of Suspended Permit - Any person whose permit has been suspended may make application for the purpose of reinstatement of the permit. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the permit may be reinstated.

F. Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a permittee which does not meet the requirements of these rules may be detained or embargoed.

G. Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

KEY: food inspection
December 3, 1996 4-32-8
Notice of Continuation March 30, 2001

R58. Agriculture and Food, Animal Industry.
R58-12. Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments.
R58-12-1. Authority.

Promulgated Under Authority of Section 4-32-7.

R58-12-2. Records.

Accurate records of each animal slaughtered by its owner which enters a meat exempt (custom cut) establishment must be kept on approved Department cards. These records shall include:

A. The date,
B. The owner's name, address and telephone number,
C. Name and address of exempt establishment,
D. Kind of animal.

R58-12-3. Carcass Slaughtered at Home.

Upon receiving an animal which was slaughtered by its owner into an exempt establishment, the proprietor, manager or employee of the exempt establishment shall:

A. See that the appropriate Department cards and tags are filled out:

1. One card shall be sent into the Department. (These cards must be sent in by the 10th of the month for owner slaughtered animals received during the preceding month.)

2. One card shall remain in the exempt establishment file for at least one year.

B. "Not for Sale" tags must be affixed to each quarter of the animal. Two of these tags shall be affixed to the achilles tendon of each of the rear quarters and the two others tags shall be affixed under the flexor tendons of the forearm of each of the forequarters.

C. A legible "Not for Sale" stamp with letters at least 3/8" in height shall be applied directly on each quarter of the carcass.

R58-12-4. Uninspected Carcass.

If an uninspected carcass is found in an exempt establishment that has not been properly identified as required above, or as outlined for Farm Custom Slaughtered carcasses, the Commissioner of Agriculture and Food or his representative shall embargo and hold the carcass until proof of ownership has been determined.

KEY: food inspection
1987 4-32-7
Notice of Continuation March 30, 2001

R58. Agriculture and Food, Animal Industry. **December 3, 1996** **4-32-7**
R58-13. Custom Exempt Slaughter. **Notice of Continuation March 30, 2001**
R58-13-1. Authority.

Promulgated under authority of Section 4-32-7.

R58-13-2. Inspection Exemptions.

A. The Commissioner of Agriculture and Food may exempt the operation of any person from inspection or other requirements of Title 4, Chapter 32, to the extent such operations would be exempt from corresponding requirements under the Federal Meat Inspection Act.

B. The Commissioner shall exempt from inspection the slaughtering and preparation by any person of any livestock which is exclusively for use by the owner of said livestock, members of his household, his nonpaying guests, or full time employees.

C. The custom operators claiming exemption from inspection will keep records showing the numbers and kinds of livestock slaughtered on a custom basis, the quantities and types of products prepared on a custom basis, and the names and addresses of the owners of the livestock and products. In addition to these records all beef animals slaughtered at an exempt slaughter establishment must have received a Utah State Brand Inspection prior to slaughter.

D. The establishment in which custom operations are conducted will conform to all sanitary requirements prescribed by the Commissioner or his designee and 9 C.F.R. 308.4 through 308.11, 308.13, 308.14 and 308.3 (except 308.3 (d) (2) and (3), January 1, 1996 edition.

R58-13-3. Identification of Carcasses.

The carcasses of custom slaughtered animals will be clearly and plainly marked "NOT FOR SALE," in letters not less than 3/8 of an inch in height, immediately after the slaughter process is completed. The custom slaughtered carcass will be marked on every primal cut; leg, rump, loin, rib, shoulder, brisket, and plate. Custom prepared products must be plainly marked "NOT FOR SALE," 3/8 inch letter height, immediately after being prepared and kept so identified until delivered to the owner.

R58-13-4. Separation of Custom and Official Slaughtering.

A. If exempted custom slaughtering or other preparation of products is conducted in an official establishment, all facilities and equipment in the official establishment used for such custom operations shall be thoroughly cleaned and sanitized before they are reused for preparing any products for sale.

B. Exempted custom slaughtered carcasses and products will be kept separate and away from all inspected carcasses and products while in an official establishment. Custom slaughtered carcasses will be kept not less than 36 inches apart in the nearest proximity from inspected carcasses in chill and holding coolers.

C. The construction of all exempted slaughter or processing establishments will conform to minimum requirements as prescribed by the Commissioner or his designee to assure adequate facilities for the purpose intended as required in the licensing act.

KEY: food inspection

R58. Agriculture and Food, Animal Industry.
R58-15. Collection of Annual Fees for the Wildlife Damage Prevention Act.
R58-15-1. Authority.

A. This rule is promulgated under authority of Subsection 4-2-2(1)(j) and Section 4-23-7.

B. This rule defines the policies by which the board shall implement the collection and non-collection exemption of annual fees assessed under the Wildlife Damage Prevention Act, Section 4-23-7.

C. This rule provides a uniform and fair method for the collection of wildlife damage fees as provided in Section 4-23-7.

R58-15-2. Exempt Owners.

The Utah State Department of Agriculture and Food may exempt owners from payment of imposed fees when the Commissioner determines that:

A. Livestock as defined in the Agricultural and Wildlife Damage Prevention Act are permanently confined within pens or corrals within incorporated city limits where animal damage control activity by state or federal agencies is prohibited or severely restricted.

B. Cattle which originate in Utah and leave to another state on commuter permits are exempt.

C. Annual fees which do not exceed $30.00, may be allowed when the commissioner finds enough extenuating circumstances to show that the livestock owner may not receive sufficient benefits from the predator control program, or

D. Owners may file an exemption for the portion of the fee that is used for predator control, but would still be required to pay the sheep promotion portion of the fee. All sheep owners would be required to file for the exemption annually. Proceeds collected from wool sales or brand inspections from exempt animals for predator control will be refunded to the owner provided an exemption request is filed with the department prior to December 31 of the calendar year corresponding to the exemption, and the exemption request is approved by the commissioner. Forms for submitting the exemption request can be obtained from the department.

R58-15-3. Fees Collection.

The department will adhere to the following procedures to avoid collecting multiple fees on cattle by brand inspection.

A. (1) Cattle that have been fee brand inspected and have a certificate indicating collection of predator control will not require further fee collection after consignment to feedlots within the state.

(2) When cattle are produced in state, and ownership is retained by that producer at a feedlot, a predator-control fee will normally be assessed when such cattle are marketed in this state.

(3) If conditions in R58-15-3-A(2) apply, but the cattle are shipped interstate, predator control fees shall be paid on the fee brand inspection prior to shipment interstate.

(4) Cattle which originate in another state and are brought in-state for grazing will be charged a predator fee on the brand inspection certificate when exiting the state.

B. Dairy cattle are subject to the predator control fee when those animals are consigned to a slaughter facility or auction barn. Special designated dairy replacement sales or dairy replacement auctions are exempt.

C. Pursuant to a memorandum of understanding between the Department of Agriculture and Food and wool marketing agencies or dealers, titled "Wool Fee Collection" is available at the Predator Fee Collection, Utah Department of Agriculture and Food, P.O. Box 146500, 350 N. Redwood Road, Salt Lake City, UT 84114-6500, the collection of wool fees is hereby established. On forms provided by the department, the marketing agency will record the following information:

name of company
year and quarter
the name and address of the producer
pounds of wool
number of sheep
amount deducted

Records and fee payments will be furnished to the department no later than April 30, July 30, October 30, and January 30 of each year. These dates correspond to a 30-day period following a quarterly collection of fees. (January to March; April to June; July to September; and October to December.)

D. Movement of sheep from out of state producers into Utah will be subject to fees imposed for predator control. These fees will be collected commensurate with forms delivered to such producers prior to January 1 of each calendar year, which are returned to the department no later than April 1 of each year.

E. Movement of livestock from in-state producers to other states to graze, and in cases where cattle are marketed out of state, or sheep that are shorn of wool that is marketed in other states, and which products are not subject to the collection methods described in Title 4, Chapter 23, the producers will be required to submit to the department on forms provided by the department such fees as are applicable, prior to April 1 of each calendar year.

R58-15-4. Imposed Fees.

The commissioner may determine the following fees after an owner's failure to file completed reporting forms and prior-fees owed and citations may be issued to persons found not in compliance, based on the following provisions:

A. A minimum fee of $25.00 for failure of owner to file the completed report as required under Section 4-23-6;

B. A fee calculated at a rate of one percent per month (twelve percent APR) applied to the unpaid balance of the amount due that is not paid as required under Title 4, Chapter 23.

C. A fee to compensate for costs of collection: including court costs, reasonable attorney's fees, and applicable administrative costs.

R58-15-5. Predator Control Services.

In accordance with the "Utah Animal Damage Control Program", the State Department of Agriculture and Food may elect to provide various degrees of predator control services to individual landowners, lessors, or administrators, as per separately negotiated agreements. Those who fail to pay annual fees as required under Section 4-23-7 may only receive minimal levels of service.

KEY: administrative procedure, enforcement
August 14, 1995 4-2-2(1)(j)
Notice of Continuation March 30, 2001 4-23-7

R58. Agriculture and Food, Animal Industry.
R58-16. Swine Garbage Feeding.
R58-16-1. Authority.

Promulgated under authority of Sections 4-31-10, 4-31-11, 4-31-12; and Subsection 4-2-2(1)(c), (f), and (j).

R58-16-2. State Requirement.

For purposes of this rule, no swine which are raised, held or sold in this state for commercial intent shall be fed garbage, except as permitted by R58-16-3.

R58-16-3. Federal Regulations Adopted by Reference.

Exceptions to R58-16-2 are defined in regulations which were promulgated by the United States Department of Agriculture (or designated agencies), as contained in 9 CFR 166 and 167, January 1, 1996 edition; which is adopted and incorporated by reference within this rule.

KEY: food inspection
January 1, 1997 4-2-2
Notice of Continuation March 30, 2001 4-31

R65. Agriculture and Food, Marketing and Conservation.
R65-1. Utah Apple Marketing Order.
R65-1-1. Authority.

Promulgated under authority of Subsection 4-2-2(1)(e).

R65-1-2. Definitions of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Apples" means apples produced for market.

D. "Producer" means any person in this State in the business of producing or causing to be produced apples for the commercial market, provided such producers shall not include producers who sell all the commodity direct to the consumer.

E. "Handler" means any person engaged in the operation of selling, marketing, or distributing in commerce, or affecting commerce, apples which are produced in Utah; but no rule under this Order shall apply to the sale of such apples to Retail Outlets.

F. "Registered" producers means a producer who has indicated that he/she wants to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

G. "Known" producers means a producer of a specific commodity who has been identified by the commodity group, her/himself, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

R65-1-3. Board.

A. A Board of Control is hereby established consisting of seven members, two of whom shall be handlers to carry out the provisions of this order.

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Two grower members and one handler shall be appointed for a period of two years - the first appointment only. Three grower members and one handler member shall be appointed for a period of four years. All appointments after the first year shall be for a period of four years.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry.

D. No member of such Board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

E. The duties of the Board shall be administrative only and may include only the acts mentioned in this order.

F. A majority of the Board of Control must attend a meeting to conduct business. All decisions of the Board of Control shall be by majority vote.

G. The officers of the Board shall be selected from the seven Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office; it shall be filled by the Commissioner from a list of names submitted by the industry.

H. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-1-4. Provisions of the Order.

A. This order provides for:

1. Advertising and sales promotion to create and expand the market of Utah Apples. This shall be done without reference to brand or trade names.

2. Research projects and experiments for the purpose of improving the quality, size, health and general conditions of the apples grown in the State of Utah and for the purpose of protecting the health of the citizens of the State.

3. Uniform grading of apples sold or offered for sale by producers or handlers. Such grading standards shall not be established below any minimum standards now prescribed by law for this State.

4. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order which is to strengthen the apple businesses in the state.

B. Expenses - Assessments - Collection and Disbursement

1. Each producer or handler subject to this order shall pay to the Board of Control such producer's or handler's pro rata share of such expenses as the Commissioner may find will necessarily be incurred by the Board for the maintenance and functioning of said Board. Each producer shall pay up to 5 cents per 40 lb. box to the Board annually. The discretionary assessment shall be set by majority vote of the board, and approved by the Commissioner. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any handler or producer, subject to this Order, for the collection of such handler's or producer's pro rata share of expenses.

2. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

3. The Board of Control is required to reimburse the Commissioner for funds which are expended by the Commissioner in performing his duties, as provided in this Order, such reimbursement to include only funds actually expended in connection with this Order.

4. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to paragraph 5. Any funds remaining at the end of any year over and above the necessary expenses of

said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

R65-1-5. Division of Funds.

Assessments made and monies collected under provisions of this Order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-1-6. Complaints for Violations - Procedure.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the State.

R65-1-7. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request by December 31 for apples harvested in that harvest year.

R65-1-8. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every five years by the industry, Subsection 4-2-2(3)(a). Once a year, a referendum vote may be called at the request of the producers through a petition of ten percent of the producers.

KEY: promotions
1987 4-2-2(1)(e)
Notice of Continuation March 6, 2001

R65. Agriculture and Food, Marketing and Conservation.
R65-3. Utah Turkey Marketing Order.
R65-3-1. Authority.

A. Promulgated under authority of Section 4-2-2(1)(e).

B. The Commissioner of Agriculture and Food finds, after a study of information available and by request of the industry that it is in the public interest to establish a marketing order to improve conditions in the turkey producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum representing not less than two-thirds of the turkey production for the State of Utah during the calendar year. It is therefore ordered by the Commissioner, acting by the authority vested in him, that an Order be established to assure an effective and coordinated program to maintain and expand the Utah turkey industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-3-2. Definition of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Turkeys" means turkey eggs, turkey poults, breeder hens, and turkeys.

D. "Producer" means any person in this state in the business of producing or causing to be produced turkeys for market, provided producers shall not include producers who sell turkeys direct to the consumer which they themselves have produced.

E. "Handler" means any person engaged in the operation of selling, marketing, or distributing turkeys which are produced in Utah; but no rule under this Act shall apply to the sale of such turkeys to the ultimate consumer.

R65-3-3. Board.

A. A Board of Control is hereby established consisting of five members, two of whom shall be handlers, to carry out the provisions of this marketing order.

B. The original members of the Board of Control shall be selected by the Commissioner from names submitted by the industry.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry. One grower member and one handler member shall be appointed in February of 1981 for a period of three years. Two grower members and one handler member shall be appointed in February of 1981 for a term of four years.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more than eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office; it shall be filled through a board election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of Utah turkey production,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Turkey Marketing Board,

3. to conduct advertising programs to increase the consumption of Utah produced turkeys where and when possible, and

4. to conduct research projects to improve the profit potential of the Utah turkey industry.

5. Financial reports will be made available annually for the Board and members of the industry.

G. No member of such Board shall receive a salary, but each shall be entitled to actual expenses incurred while engaged in performing the duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

H. All decisions of the Board of Control shall be by a majority vote of those present.

I. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

J. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business.

R65-3-4. Provision of this Order.

A. This order provides for:

1. Uniform grading and inspection of turkeys sold or offered for sale by producers or handlers and for the establishment of grading turkeys in accordance with such grading standards so established. Such grading standards shall not be established below any minimum standards now prescribed by law for this state.

2. Advertising and sales promotion to create new or larger markets for turkeys grown in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to a particular brand or trade name. Provided further, that no advertising or sales promotion program shall be authorized which shall make use of false or unwarranted claims in behalf of the product covered by this Order, or disparage the quality, value, sale or use of any other agricultural commodity.

3. The labeling, marking, or branding of turkeys provided that such labeling, marking or branding, does not conflict with any rules of the Commissioner or laws of the State of Utah.

4. Conducting research projects and experiments for the purpose of improving the quality, size, and health and general condition of the turkey industry and for the purpose of protecting the health of the people of the State.

5. The Board of Control to cooperate with any other state

or federal agency whose activities may be deemed beneficial to the purposes of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each handler subject to this Order shall pay to the Board of Control such handler's pro rata share (as approved by the Commissioner) of such expenses as the Commissioner may find will necessarily be incurred by the Board for the maintenance and functioning of said Board. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any handler, subject to this Order, for the collection of such handler's pro rata share of expenses.

a. Such handler's assessment shall be approved by the Commissioner and the industry.

b. This assessment shall be set at $.08 per hundred weight of processed bird.

2. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disperse all funds pursuant to R65-3-5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

3. The assessment of each producer shall be deducted from the producer's gross receipt by the dealer or producer-handler. All proceeds from the deducted portion shall be paid at least quarterly to the Board upon request of the Board.

4. The Board shall retain records of the receipt of the assessment which will be available for public inspection upon request.

5. The Board of Control is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

R65-3-5. Division of Funds.

Assessments made and monies collected under the provisions of this Order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year.

R65-3-6. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request at the end of each calendar year.

R65-3-7. Complaints of Violations.

Complaints of violation shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the State.

R65-3-8. Termination of Order.

The Commissioner may terminate this Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every 5 years by the industry, Subsection 4-2-2(3)(a). A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

KEY: promotions
1987 4-2-2(1)(e)
Notice of Continuation March 6, 2001

R65. Agriculture and Food, Marketing and Conservation.
R65-4. Utah Egg Marketing Order.
R65-4-1. Authority.

A. Promulgated under authority of Section 4-2-2(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds, after a study of information available and by request of the industry that it is in the public interest to establish a marketing order to improve conditions in the egg producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum representing not less than two-thirds of the egg production for the State of Utah during the calendar year. The production and marketing of egg products by numerous individual egg producers has prevented coordinated efforts in research and promotion necessary to maintain and expand markets. This process is vital to the well-being of the Utah egg industry which provides one of the basic, natural foods in the diet. It is therefore ordered by the Commissioner, acting by the authority vested in him, that an Order be established to assure an effective and coordinated program to maintain and expand the Utah egg industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-4-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Commercial Eggs" or "Eggs" means eggs from domesticated chickens which are sold for human consumption either in the shell egg form or for further processing into egg products.

D. "Producer" means a person owning at least 3,000 laying hens engaged in the business of producing or causing to be produced eggs for the commercial market, provided such producers shall not include producers who sell all the commodity to the consumer.

E. "Registered" producers means producers who have indicated that they want to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

F. "Known" producers means producers of a specific commodity who have been identified by the commodity group, themselves, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

G. "Case" means a standard shipping package containing 30 dozen eggs.

H. "Spent Hen" means hens which have been in production of commercial eggs and have been removed from such production.

I. "Handler" means an individual or an organization engaged in the merchandising of eggs or egg products.

R65-4-3. Board.

A. The Utah Egg Board is hereby established consisting of five members of the egg industry, plus ex-officio non-voting members from BYU and USU, and Utah Department of Agriculture and Food.

B. The original members of the Board shall be selected by the Commissioner from a list submitted by the industry.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the Commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more that eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah egg producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the egg marketing Board,

3. to conduct a public educational program to increase the consumption of Utah produced eggs where and when possible.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least quarterly.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. Financial report will be made available annually for the Board and members of the industry by the Utah Department of Agriculture and Food.

R65-4-4. Provisions of the Order.

A. This order provides for:

1. Uniform grading and inspection of eggs sold or offered for sale by producers or handlers and for the establishment of grading standards of quality, conditions, and size. Such grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for eggs produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of egg or egg products in conformity with the regulations of the Commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of

improving the quality, size, vitality, and general condition of the egg industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the Board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 30 cents per case to the Board annually. The discretionary assessment shall be set by majority vote of the board, and approved by the Commissioner. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. The assessment of each producer shall be deducted from the producer's gross receipt by the dealer or producer-handler. All proceeds from the deducted portion shall be paid at least quarterly to the Commission upon request of the Board.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

4. The Board of Control is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-4-5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year.

6. Any producer who wishes a refund of their paid assessment may request such by notifying the Board in writing within sixty days of payment of the assessment.

R65-4-5. Division of Funds.

Assessments made and monies collected under provisions of this order shall be divided into assessments and funds for:

A. administrative purposes,

B. educational purposes, advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-4-6. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-4-7. Complaints for Violations - Procedure.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-4-8. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-4-9. Quarterly Meeting.

The Board shall meet at least quarterly.

KEY: promotions
1987 **4-2-2(1)(e)**
Notice of Continuation March 6, 2001

R70. Agriculture and Food, Regulatory Services.

R70-101. Bedding, Upholstered Furniture and Quilted Clothing.

R70-101-1. Authority.

A. Promulgated Under Authority of Section 4-10-3.

B. Scope: The purpose of these rules is to designate the license fees, labeling, terms, definitions, nomenclature and conditions as commonly used and recognized in the manufacture, sale and distribution of bedding, upholstered furniture, quilted clothing products and filling materials.

R70-101-2. General Requirements.

A. These rules shall apply to all persons, partnerships, corporations and associations engaged in the business of manufacturing, retailing, wholesaling, processing, repairing, and selling items of bedding, upholstered furniture and quilted clothing, and filling materials. These rules do not apply to persons who make or renovate upholstered furniture, clothing or bedding for their own use.

B. Foreign, out-of-state articles or materials sold in Utah. This rule shall apply to bedding, upholstered furniture, quilted clothing and filling materials sold in Utah regardless of their point of origin.

R70-101-3. Definitions.

A. Manufacture means to make, process, or prepare from new or secondhand material, in whole or in part, any bedding, upholstered furniture, quilted clothing, or filling material for sale; but does not include isolated sales of such articles by persons who are not primarily engaged in the making, processing, or preparation of these articles. For the purpose of the enforcement of this rule, the term manufacturer shall mean a person who either by himself or through employees or agents makes for the purpose of sale any bedding, upholstered furniture, quilted clothing, filling material or any unit thereof, or a retailer who sells bedding, upholstered furniture, quilted clothing and filling material privately labeled under his name.

B. Non-resident means a person licensed under these rules who does not have premises in the State of Utah.

C. Old means filling material or portion thereof which shows characteristics of aging through deterioration or changing from its original qualities.

D. Person means an individual, partnership, association, firm, auctioneer, trust, or corporation, and agents, servants and employees of them.

E. Premises means all places where bedding, upholstered furniture, quilted clothing or filling material is sold, offered for sale, exposed for sale, stored, renovated or manufactured, and the delivery vehicles used in their transportation.

F. Supply dealer means a person who manufactures, processes or sells at wholesale any felt, batting, pads or other filling, loose in bags, in bales or in containers, concealed or not concealed, intended for use in bedding, upholstered furniture or quilted clothing.

G. Sell or any of its variants include any combination of the following; sale, offer, or expose for sale, barter, trade, deliver, rent, consign, lease, possess with the intent to sell or dispose of in any other commercial manner, but does not include any judicial, executor, administrator or guardian sale. The possession of any article of bedding, upholstered furniture, quilted clothing or filling material, defined in these rules, by any maker, dealer, or his agents or servants in the course of business, shall be presumptive evidence of intent to sell.

R70-101-4. License.

Except as otherwise provided in these rules, any person who advertises, solicits or contracts to manufacture, repair or wholesale any bedding, upholstered furniture, quilted clothing, or filling materials who either does the work himself or has others do it for him, shall secure the particular license for the particular type of work that he solicits or advertises that he does, regardless of whether he has a shop or factory.

A. Annual license fee. The fee imposed for each license granted under these rules shall be approved by the Legislature.

When the appropriate fee is not paid on or before January 1, the license shall become delinquent, and there shall be added to the fee a penalty of $25.

B. Suspension or revocation of license, procedure, review, record. In addition to other remedies provided in these rules, the Department shall have the authority to suspend or revoke any registration or license required by these rules for any violation of their provisions. A suspension or revocation shall be handled as outlined in Section 4-1-5.

R70-101-5. Sanitation Requirements.

A. Use of unsanitary filling material. The premises, delivery equipment, machinery, appliances, and devices of all persons licensed under these rules shall at all times be kept free from refuse, dirt, contamination or insects and no person shall use in the making, repair or renovating of bedding, upholstered furniture or quilted clothing any filling material:

1. that contains any bugs, vermin or filth;
2. that is unsanitary;
3. that contains burlap, or other material, that has been used for baling.

R70-101-6. Manufacturing, Distribution, Advertising, Labeling and Sale of Quilted Clothing.

The Department adopts the standards and procedures relating to quilted clothing as specified in Rules and Regulations Under the Textile Fiber Products Identification Act, July 9, 1986 edition; Federal Trade Commission Guides for the Feather and Down Products Industry, October 29, 1971 edition; Rules and Regulations Under the Fur Products Labeling Act, July 4, 1980 edition and the Rules and Regulations Under the Wool Products Labeling Act of 1939, July 9, 1986 edition; are hereby incorporated by reference within this rule; provided, that wherever the word "should" appears in the Federal Trade Commission guide, the word "shall" shall be inserted in lieu thereof, and excepting further that wherever conflicts arise, the state rule shall govern.

R70-101-7. Manufacturer Identification and Tag Requirements.

A. The identification of a manufacturer, wholesaler or supply dealer of quilted clothing or filling material which is to appear on the label or tag will be the same as required in rule 19-20 of the Federal Textile Fiber Products Identification Act

and Wool Products Labeling Act, and the United States Federal Trade Commission Rules and Regulations.

1. The form of identification used on labels or tags shall be the same supplied to the Department on the application for registration.

B. For articles of bedding and upholstered furniture,the law tag shall use the format adopted by the Association of Bedding and Furniture Law Officials (ABFLO), as listed in the "Tagging Law Manual" of the International Sleep Products Association (ISPA). A copy of the current edition of the "Tagging Law Manual" is available for public inspection at the Regulatory Services office of the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

C. A single registry number, issued by the state in which the firm is first registered, shall be used on the law tag.

D. Every firm name doing business under a separate registry number other than the one listed on their application for license, will be required to procure a license for each number used.

R70-101-8. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

A. The filling material shall be described on the label or tag by the true generic name, grade, description term, or definitions of the filling material as accepted and approved by the Department. When more than one kind of filling material is used in a mixture, the percent by weight of each shall be listed in order of their predominance. Federal fiber tolerance standards are applicable. Blends may be described if applicable as under Section 14 in these rules. In the case of non-down filled articles of quilted clothing, any fiber or groups of individual fiber present in an amount of less than 5% by weight, of the total fiber content may be designated only as "other fiber" or "other fibers." When a different filling material is used in various parts of the garment, the areas of the garment shall be named, followed by the name of the filling material used in that area. Examples:

Body - (50% down, 50% feathers) or -

Body - (goose down) or body (duck down or down)

Sleeves - Polyester fiber

Pockets - Nylon fiber

B. Trade names and non-generic terms used to describe filling materials is prohibited.

R70-101-9. Use of Rubber Stamp or Stencil.

A rubber stamp or stencil may be used in lieu of a tag on articles having a smooth backing on which the imprint can be legibly and indelibly stamped, and on suitable surfaces of bales or containers of felt, batting, pads or other filling material used or to be used in bedding, upholstered furniture and quilted clothing products.

R70-101-10. Making or Selling Material or Parts.

A person shall not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture or quilted clothing, unless such material is plainly tagged as described in the preceding section.

R70-101-11. Labeling of Foreign Articles.

Responsibility for labeling of unlabeled foreign-made bedding, upholstered furniture, quilted clothing and filling material in compliance with these rules shall rest with the person selling the merchandise in Utah.

R70-101-12. Violation of This Rule.

A. It shall be a separate violation of these rules for each improperly labeled or tagged or unlabeled or untagged article of bedding, upholstered furniture, quilted clothing or filling material made, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to the provisions of these rules.

B. Defense. No person shall be guilty of a violation of these rules if he has received from the person by whom the articles were manufactured or from whom they were received a guarantee in good faith and that the articles are not contrary to the provisions of these rules. The guarantee shall be in the form prescribed by the Federal Textile Fiber Products Identification Act, the Federal Wool Products Labeling Act and the United States Federal Trade Commission Rules and Regulations issued.

R70-101-13. Enforcement Procedures.

A. Removal of Inspector's Tag. Any person who removes, or causes to be removed, any tag or device placed upon any article of bedding, upholstered furniture or quilted clothing or any material, by an inspector in the performance of his official duties, is guilty of violation of these rules.

B. Failure to Produce Articles Condemned. The failure of any person to produce upon demand of an inspector any article that has been condemned and ordered held on inspection notice signed by the person, or an inspection notice that the person has refused to sign, is a violation of these rules.

C. Interfere, Hinder Inspector. No person shall interfere with, obstruct or other wise hinder any inspector of the Department in the performance of his duties.

D. Retailer's Responsibility to:

(a) insure that any article of bedding, upholstered furniture, quilted clothing or filling material they sell is labeled with a uniform law tag.

(b) fully comply with the Department's laws and rules governing false and misleading advertisement and make sure that all manufacturers from whom they purchase products that come under the purview of the act, hold a valid license with the department.

In addition, upon request of any representative of the Department, a retailer shall provide the Department with the identity of the manufacturer or wholesaler of any article of bedding, upholstered furniture, quilted clothing or filling material sold by a retailer. If the manufacturer or wholesaler so identified is not registered pursuant to these rules and fails or refuses to register upon notification by the Department, any article of bedding, upholstered furniture, quilted clothing, or filling material manufactured or wholesaled by the manufacturer or wholesaler and sold in this state may be withheld from sale until the manufacturer or wholesaler registers; provided, that in the event the manufacturer or wholesaler fails to register, the retailer may register in lieu of the manufacturer or wholesaler.

R70-101-14. Rules and Regulations for Filling Material.

A. All terms and definitions of all filling materials shall be those terms which have been submitted to and approved by The National Association of Bedding and Furniture Law Officials, Inc., except those terms and definitions listed in these rules.

B. Any plumage product which exceeds the permissible amount of residue, landfowl plumage, crushed or quill feathers or damaged feathers as provided for in the Federal Trade Commission's Guides for the Feather and Down Products Industry, Guides 6(b), 7, 8, and 10, Promulgated October 29, 1971, which is hereby incorporated by reference within this rule, shall state the entire amount of the components present on the label or tag.

C. Cleanliness of Filling Materials.

All filling materials shall be reasonably clean and free from extraneous material, dirt, dust, filth, epidermis, excreta, disagreeable odors, or other contamination.

Cleanliness shall mean the oxygen number of any filling material consisting of whole feathers or down or a combination thereof; and the oxygen number of any filling material consisting of an admixture of feathers and down which contains five percent (5%) of crushed feathers shall not exceed 25 grams of oxygen per 100,000 grams of sample. (Oxygen number is considered as the amount, by weight, of oxidizable matter such as blood, excreta, fecal matter present.)

D. Imperfect, irregular foam shall mean any foam products which show major imperfections or that fall below the foam manufacturer's usual standards or specifications and must be stated on the tag as imperfect or irregular along with the generic term of the foam.

E. Imperfect, irregular fibers shall mean fibers that have imperfections or that fall below the fiber manufacturer's usual standards or specifications and must be stated on the tag as imperfect or irregular along with the generic term of the fiber.

F. The terms prime, super, northern and other terms of similar import shall not be used unless the fill can be proved to be of superior quality and meet the terms of the qualifying statement. Industry shall be responsible for proving to the Department that the fill is superior to the industry standard rating of 550 cubic inches of fill power.

R70-101-15. Products Not Intended for Uses Subject to These Rules.

A. The Commissioner hereby excludes from these rules all textile fiber products related to quilted clothing except:

1. Articles of quilted clothing.
2. Down and fiber filled hats.
3. Down and fiber filled hoods.
4. Down filled and fiber filled booties with fabric outer-covering.
5. Down and fiber filled gloves.
6. Bulk filling material used in the above.

KEY: quality control
February 15, 1997 4-10-3
Notice of Continuation March 6, 2001

R70. Agriculture and Food, Regulatory Services.
R70-620. Enrichment of Flour and Cereal Products.
R70-620-1. Authority.

A. Promulgated under authority of 4-6-3.

B. The Utah Department of Agriculture and Food adopts and incorporates by reference the Code of Federal Regulations, April 1, 2000 edition Title 21, parts 137 and 139, as its enrichment standards and labeling requirements governing the identity and quantity of vitamins and minerals to be added to flour and cereal manufactured or sold in Utah.

R70-620-2. Enrichment Standards.

The following flour and cereal products have identity and enrichment standards as prescribed in 21 CFR parts 137 and 139.

A. Enrichment standards for flour and cereals produced from small grain and corn include enriched bromated flour, enriched self-rising flour, instantized - instant blending and quick-making forms of the same, enriched farina, enriched cornmeals, enriched corn grits and enriched rice.

B. Food products containing 25 percent or more of flour produced from small grain and corn include enriched white bread and rolls, enriched macaroni products, enriched noodle products, enriched vegetable macaroni products, enriched vegetable noodle products, enriched macaroni products made with non-fat milk, and enriched macaroni products with fortified protein.

R70-620-3. Labeling.

A. The flour and cereal products listed in R70-620-2A and B in the above enrichment standard shall be labeled in accordance with the Code of Federal Regulation Title 21, definitions and standards of identity.

B. The unenriched counterpart of the flour and cereal products listed in R70-620-2A of the above enrichment standards may be sold at retail in Utah only if there is prominently shown on the principle display panel the word "unenriched" in type no smaller than one-half the height of the name of the product on the principle display panel.

R70-620-4. Certificate.

A. Any flour sold to a distributor or processor must be certified, assuring the seller that the flour or any flour or cereal product derived from the flour when offered for retail sale will conform to the enrichment standards and labeling requirements.

B. The required certificate shall be in the following form:

Date

The following flour is unenriched. I hereby certify that the final product made from this flour will meet the enrichment standards prescribed for flour.

Signature and Title of Distributor or Processor

Address of Distributor or Processor

KEY: food inspection
March 6, 2001 4-6-3
Notice of Continuation January 16, 2001

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetologist/Barber Licensing Act Rules.
R156-11a-101. Title.

These rules are known as the "Cosmetologist/Barber Licensing Act Rules."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or these rules:

(1) "Direct supervision of an on the job training intern", as used in Subsections 58-11a-304(8), means that the on the job training intern's cosmetology/barber supervisor works in the facility and is on the premises at the time the on the job training intern is working and is available for advice, direction, and consultation.

(2) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(5), in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 11a.

R156-11a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a cosmetology/barber school until the application is approved and a license issued.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-11a-302(1)(e), 58-11a-302(2)(d), 58-11a-302(3)(f), and 58-11a-302(4)(e), the examination requirements for licensure are established as follows:

(1) Applicants for licensure as a cosmetologist/barber shall:

(a) pass the Utah Law and Rules Examination with a score of at least 75%;

(b)(i) pass the Utah Theory Exam with a score of at least 75%; or

(ii) pass the National-Interstate Council of State Boards of Cosmetology National examination with a passing score as established by the Council of State Boards of Cosmetology; and

(c)(i) pass the Utah Practical Exam or an equivalent Practical Exam taken in another state; or

(ii) have practiced as a licensed cosmetologist/barber in another state for a period of not less than 4,000 hours.

(2) Applicants for licensure as a cosmetologist/barber apprentice shall pass the Utah Law and Rules Examination with a passing score of at least 75%.

(3) Applicants for licensure as a cosmetologist/barber instructor shall pass the following:

(a) the Utah Cosmetologist/Barber Instructor Licensing Examination with a passing score of at least 75%; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

(4) Applicants for licensure as an electrologist shall pass the following:

(a) the National-Interstate Council of State Boards of Cosmetology Electrologist test with a passing score as established by the Council of State Boards of Cosmetology; and

(b) the Utah Law and Rules Examination with a passing score of at least 75%.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(a) failing to provide direct supervision of an apprentice, cosmetology/barber student, or student instructor;

(b) failing to obtain accreditation as a cosmetology/barber school within the specified time;

(c) failing to maintain accreditation as a cosmetology/barber school after having been approved for accreditation;

(d) failing to comply with the standards of accreditation applicable to cosmetology/barber schools;

(e) failing to provide adequate instruction or training as applicable to a cosmetology/barber school or apprentice supervisor;

(f) failing to comply with Title 26 of the Utah Health Code;

(g) failing to comply with the apprentice program requirements as set forth in Section R156-11a-701;

(h) failing to comply with the requirements of an on the job training internship as set forth in Subsections 58-11a-304(8) and R156-11a-702;

(i) failing as a licensed cosmetologist/barber to directly supervise an on the job training intern;

(j) allowing an unlicensed individual to work in an on the job training internship when the intern is not enrolled in a cosmetology/barber school licensed in the state; and

(k) allowing an unlicensed individual to work as an on the job training intern who is enrolled in a cosmetology/barber school licensed in the state but who does not meet the requirements of R156-11a-702.

R156-11a-601. Standard for Accreditation.

In accordance with Subsections 58-11a-302(5)(c)(iii) and 58-11a-302(5)(c)(iv), the accreditation standards for cosmetology/barber schools include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah

Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A new school shall submit an application for candidate status for accreditation to an accrediting commission within one week of receiving licensure from the Division as a cosmetology/barber school and shall provide evidence of receiving candidate status from the accrediting commission to the Division within 90 days of the date the school was licensed.

(4) The school shall have 24 months following the date the application for candidate status for accreditation was submitted to the accrediting commission to be approved for accreditation.

(5) Each school shall at all times comply with the standards for cosmetology/barber schools set by the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS).

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsection 58-11a-302(5)(c)(iii), the standards for the physical facility of a cosmetology/barber school shall be:

(1) the standards established by the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS) 1996-1997 Handbook, Section 8, Standards and Criteria for Instructional Space and Facilities, which is hereby incorporated by reference; or

(2) the standards established by other accrediting commissions recognized by the Utah Board of Regents for post secondary schools, standards for physical facilities.

R156-11a-603. Standard for a Student Kit.

(1) In accordance with Subsection 58-11a-302(5)(c)(iv), schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standard for Administration of the Utah Practical Examination.

(1) In accordance with Subsection 58-11a-302(5)(c)(iv), schools shall administer the Utah Practical Examination which students must pass as a condition of graduation.

(2) The school shall provide the results of the examination to the division upon forms prescribed by the division.

R156-11a-605. Standard for Prohibition Against Operation as a Salon.

(1) In accordance with Subsection 58-11a-302(5)(c)(iv), schools shall not operate as a salon.

(2) Any salon operating within the close proximity of a school shall have a separate entrance and shall not share any floor space, facilities or equipment.

R156-11a-606. Standards for Protection of Students.

In accordance with Subsection 58-11a-302(5)(c)(iv), standards for the protection of students shall include the following:

(1) Schools are responsible to maintain each students' records and upon request by a student shall provide to the student information such as accumulated student hours and dates of attendance. In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who will be responsible to maintain the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall not use students to perform maintenance, janitorial or remodel work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work stations, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(3) Schools shall not require students to sell cosmetology/barber products for the school as a condition to graduate, but may provide instruction in cosmetology/barber products sales techniques as part of their curriculum.

(4) Schools shall keep a written daily log of student attendance at the beginning and end of each break.

(5) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

R156-11a-607. Standards for Protection of Schools.

In accordance with Subsection 58-11a-302(5)(c)(iv), standards for the protection of schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

R156-11a-608. Standards for a Written Contract.

(1) In accordance with Subsection 58-11a-302(5)(c)(iv), schools shall complete a written contract with each student prior to admission.

(2) Each contract shall contain, as a minimum:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain a copy of the contract on file for each student and shall provide a copy of the contract to the division upon request.

R156-11a-609. Standards for Staff Requirements of Cosmetologyst/Barber Schools.

In accordance with Subsection 58-11a-302(5)(c)(iv), the

staff requirement for cosmetology/barber schools shall be as follows:

(1) Schools shall be required to have as a minimum, one licensed instructor for every 20 students, or fraction thereof, present in the school. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, competitions, or may invite special guest speakers who are not licensed cosmetologist/barbers or licensed instructors, to provide instruction or give practical demonstrations to supplement the curriculum, as long as a licensed instructor is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-701. Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an apprenticeship shall include the following:

(1) The supervisor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The supervisor and apprentice shall keep a daily record which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. Said log shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) Hours obtained while attending a cosmetology/barber school shall not be used to satisfy the required 2500 hours of apprentice training.

R156-11a-702. On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern must have completed at least 1000 hours of the training contracted for with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) The on the job training intern must comply with all the rules of conduct, attendance, and provisions for make up work requirements as established in R156-11a-608.

(3) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(4) A licensed cosmetology/barber supervisor shall supervise only one on the job training intern at a time.

(5) An on the job training intern while working under the direct supervision of a licensed cosmetologist/barber may perform the following procedures:

(a) draping;
(b) shampooing;
(c) roller setting;
(d) blow drying styling;
(e) applying color;
(f) remove color by rinsing and shampooing;
(g) remove permanent chemicals;
(h) remove permanent rods;
(i) remove rollers;
(j) apply temporary rinses, reconditioners, and rebuilders;
(k) act as receptionists;
(l) do retail sales;
(m) sanitize the salon;
(o) do inventory and order supplies; and
(p) hand equipment to the cosmetologist/barber supervisor.

(6) The cosmetologist/barber supervisor must have in their possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(7) Credit toward graduation for work as an on the job training intern will not be allowed.

R156-11a-801. Electrology Curriculum.

In accordance with Subsection 58-11a-302(4)(d), the 500 hours electrology curriculum shall include the following:

(1) Introduction
(a) history of electrology;
(b) overview of curriculum; and
(c) study skills.
(2) Basic Science and Anatomy
(a) medical definitions and diagnosis;
(b) structure and function of the skin;
(c) structure and function of hair;
(d) prescription drugs affecting hair growth; and
(e) contraindications.
(3) Endocrinology
(a) physiology of the glandular system;
(b) common disorders; and
(c) puberty, pregnancy and menopause.
(4) Dermatology
(a) common skin infections, diseases and disorders; and
(b) basal cell, squamous cell and melanoma carcinomas.
(5) Neurology
(a) physiology of the nervous system;
(b) anesthetics: over-the-counter and prescription; and
(c) carpal tunnel syndrome.
(6) Angiology
(a) physiology of the circulatory system; and
(b) physiology of the immune system.
(7) Psychology
(a) client's self-perception and concerns;
(b) aesthetic/cosmetic electrolysis;
(c) gender considerations; and
(d) gender dysphoric clients.
(8) Practical Analysis
(a) evaluating the characteristics of skin;
(b) evaluating the characteristics of hair growth;
(c) needle/probe types, features and selection;
(d) insertions, considerations and accuracy; and

(e) one and two handed techniques.
(9) Infection and Disease Control
(a) pathogenic bacteria and non bacterial causes;
(b) American Electrology Association (AEA) infection control standards;
(c) aseptic techniques and sanitary procedures;
(d) sterilization methods and procedures; and
(e) health risks to the electrologist.
(10) Principles of Electricity and Equipment
(a) currents, measurement and classification;
(b) FDA Class 1 needle type epilation equipment;
(c) FDA Class 3 hair removal devices; and
(d) laser technologies for hair removal.
(11) Modalities for Needle Type Electrolysis
(a) galvanic multi needle technique;
(b) thermolysis manual technique;
(c) thermolysis flash technique;
(d) blend and progressive epilation technique;
(e) face and body treatments; and
(f) epilator operation.
(12) Clinical Procedures
(a) scheduling and time management;
(b) client clinical records;
(c) consultations;
(d) health/medical history;
(e) pre and post treatment skin care;
(f) normal healing skin effects;
(g) tissue injury and complications;
(h) treating ingrown hairs;
(i) evaluation of treatments/regrowth;
(j) positioning and draping; and
(k) stress and relaxation techniques.
(13) Professionalism
(a) image and hygiene;
(b) interpersonal skills;
(c) personal conduct;
(d) business ethics;
(e) telephone inquiries; and
(f) developing referral systems.
(14) Business Management
(a) Business Plan:
(i) business description;
(ii) marketing/advertising;
(iii) financial management; and
(iv) management plan.
(b) regulatory agencies/business licenses;
(c) tax laws and basic accounting;
(d) malpractice liability, and property insurance;
(e) computer programs designed for the electrology business;
(f) affiliation with professional associations; and
(g) continued education sources.
(15) Equipment Operation and Maintenance
(a) epilators and accessories care; and
(b) other equipment, instruments and spare parts.
(16) State Board Exams Review
(a) state rules and regulations;
(b) practical exam;
(c) National Assessment Institute (NAI) electrolysis theory; and
(d) course completion verification.

KEY: licensing, barbers, cosmetologists*
March 6, 2001 **58-11a-101**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-28. Veterinary Practice Act Rules.
R156-28-101. Title.

These rules are known as the "Veterinary Practice Act Rules".

R156-28-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or these rules:

(1) "Direct supervision" means the supervising licensed veterinarian shall be present at the point and time at which professional services are being provided by the student or unlicensed person being supervised.

(2) "In association with licensed veterinarians" as used in Subsection 58-28-8(6) means providing consultation, performing a special procedure, or providing special expertise for a specialized case in the same facility as the Utah licensed veterinarian who requested the professional services.

(3) "Indirect supervision" means the supervising licensed veterinarian shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face-to-face consultation and review of cases at the veterinary facility for the veterinary intern or unlicensed person being supervised.

(4) "NAVLE", as used in these rules, means the North American Veterinary Licensing Examination.

(5) "NBEC", as used in these rules, means the National Board Examination Committee of the American Veterinary Medical Association.

(6) "Practice of veterinary medicine, surgery, and dentistry" means those acts and practices defined in Subsection 58-28-2(4) and includes the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

(7) "Qualified continuing education" means continuing education that meets the standards set forth in Section R156-28-304.

(8) "RACE", as used in these rules, means the Registry of Approved Continuing Education.

(9) "Supervision" as used in Subsection 58-28-8(2) means direct supervision.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(5) in Section R156-28-502.

(11) "Veterinarian-client-patient relationship" means that the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client who is the owner or other caretaker has agreed to follow the instruction of the veterinarian. In addition, there is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept. In addition, the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

R156-28-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 28.

R156-28-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-28-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the education requirements for licensure in Subsection 58-28-4(3) are defined, clarified, or established as follows.

(1) Each applicant must have graduated from a veterinary college which held current accreditation by the Council on Education of the American Veterinary Medical Association (AVMA) at the time of his graduation as evidenced by an official transcript documenting the degree earned and the date of graduation or a notarized diploma.

(2) Each applicant who has received his veterinary education in a foreign veterinary school shall demonstrate educational equivalency of his foreign veterinary school with an accredited domestic veterinary school by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG).

R156-28-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the experience requirements for licensure in Subsection 58-28-4(4) are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall complete an approved internship which includes a minimum of 1000 hours of supervised veterinary practice to be earned in not less than six consecutive months and not more than 12 consecutive months. Successful completion of an approved internship shall be documented and submitted to the division in a form provided by the division.

(2) Each veterinary intern shall have a valid Utah veterinary internship license before beginning his 1000 hour internship.

(3) An applicant for a veterinary internship license must make application to the division on a form provided by the division.

(4) A veterinary intern shall practice under the indirect supervision of the licensed Utah veterinarian approved by the division in consultation with the board or a licensed Utah veterinarian designated by the supervising veterinarian. The veterinary intern must reapply to the division for any change of supervising veterinarian.

(5) The 1000 hour internship shall not begin before the applicant has graduated from an AVMA accredited veterinary college, passed the Utah Veterinary Law and Rules Examination and obtained his Utah internship license.

(6) If the applicant is a graduate of a foreign college of veterinary medicine, he must document ECFVG certification or acceptance to take the ECFVG examination and meet with the board before obtaining a Utah internship license and beginning

his 1000 hour internship.

(7) Evidence of a completed internship shall be documented by the supervising veterinarian and the veterinary intern to the division at the time application is made for Utah licensure as a veterinarian on a form provided by the division.

R156-28-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-28-4(2) are defined, clarified, or established as follows:

(1) For applicants sitting for the examinations listed in this subsection prior to May 1, 2000:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC;

(b) the Clinical Competency Test (CCT) of the NBEC of the AVMA with a minimum passing score as determined by the NBEC; and

(c) the Utah Veterinary Law and Rules Examination with a minimum passing score of 75%.

(2) For applicants who do not sit for the examinations listed in Subsection (1) prior to May 1, 2000:

(a) the NAVLE with a passing score as determined by the NBEC; and

(b) the Utah Veterinary Law and Rules Examination with a minimum passing score of 75%.

(3) To be eligible to sit for the NAVLE examination, an applicant shall submit the following:

(a) an application for licensure;

(b) application fee;

(c) a letter from the Dean of an approved veterinary school confirming the applicant is a student in good standing and will graduate with the next graduating class; and

(d) a copy of the test application submitted to NAVLE.

R156-28-302d. 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.

R156-28-302e. 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.

R156-28-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 28 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-28-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 28.

(2) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a veterinarian;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by:

(i) the American Veterinary Medical Association;

(ii) the Utah Veterinary Medical Association;

(iii) the American Animal Hospital Association;

(iv) the American Association of Equine Practitioners;

(v) the American Association of Bovine Practitioners;

(vi) certifying boards approved by the RACE of the AVMA;

(vii) the Western Veterinary Conference; or

(viii) other state veterinary medical associations;

(b) no more than five continuing education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal and no more than two continuing education hours may be counted for being a secondary author; and

(c) no more than six continuing education hours may be in practice management courses.

(6) A licensee shall be responsible for maintaining

competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents that he/she is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years; however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-28-305. Exemptions From Licensure.

In addition to the exemptions from licensure in Sections 58-1-307 and 58-28-8, the following are exempt from the licensing provisions of this chapter, subject to the stated circumstances and conditions:

(1) any unlicensed personnel of a licensed veterinarian performing duties other than diagnosis, prescription or surgery under the direct supervision of the licensed veterinarian or under the indirect supervision of said licensed veterinarian while carrying out ongoing care for hospitalized patients; and

(2) the implantation of any electronic device for identifying animals by established humane societies, animal control organizations or governmental agencies that provide appropriate training.

R156-28-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) any deviation in the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) permitting an unlicensed person under his supervision to assist or engage in acts or practices in which the individual is not competent;

(3) permitting an unlicensed person under his supervision to engage in acts or practices included in the definition of the practice of veterinary medicine, surgery, and dentistry without direct supervision or without indirect supervision while carrying out ongoing care for hospitalized patients; and

(4) permitting an unlicensed person under his supervision to perform surgery, to diagnose or prescribe.

R156-28-503. Minimum Standards of Practice.

(1) A veterinarian shall compile and maintain written records on each patient to minimally include:

(a) client's name, address and phone number, if telephone is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages; and

(e) date of service.

(2) A veterinarian shall make available to each client a statement of charges.

(3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.

(4) A veterinarian shall assure a valid veterinarian-client-patient relationship in the use, prescription, or sale of any veterinary prescription drug, or the prescribing of an extra-label use of any drug.

(5) Medical records including radiographs are the physical property of the hospital or the proprietor of the practice that prepares them.

(6) The veterinary facility shall have minimum indoor lighting to provide reasonable visibility:

(a) halls and wards with 20 foot candles;

(b) reception area with 50 foot candles;

(c) examining rooms at table elevation with 70 foot candles; and

(d) surgery table elevation with 150 foot candles.

(7) The veterinary facility shall have adequate measures for the control of objectionable noises and odors in compliance with applicable health codes and standards of practice.

(8) The veterinary facility shall contain the following:

(a) a reception room and office, or a combination of the two;

(b) an examination room or area that is separate from the other areas of the facility and of sufficient size to accommodate the doctor, assistant, patient and client; and

(c) a sanitary surgery room or area which is separate and distinct from all other rooms, except in a large animal practice where modifications may be necessary to accommodate large animal surgery.

(9) The veterinary facility shall have an alternate source of lighting to be used in the event of power failure.

(10) The veterinary facility shall have appropriate temperature and ventilation to assure the comfort of all patients.

(11) The veterinary facility shall have an acceptable sanitary system for the disposal of deceased animals.

(12) In those veterinary facilities where animals are retained for treatment or hospitalization, the following shall be provided:

(a) separate compartments, one for each animal, maintained in a sanitary manner as to assure comfort, and be of a design and construction so as to facilitate sanitation procedures;

(b) facilities and efforts allowing for the effective separation of contagious and noncontagious cases;

(c) exercise areas which provide and allow effective separation of animals and their waste products; and

(d) adequate fire precautions according to local building and fire codes.

(13) The following equipment is required in a veterinary practice:

(a) an adequate means of sterilizing all appropriate equipment;

(b) autoclave equipment shall be properly utilized in those facilities where major surgery is conducted;

(c) surgical packs including drapes, gloves, sponges, towels, and adequate instrumentation;

(d) anesthetic equipment in accordance with the level of

surgery performed available at all times; and

(e) oxygen resuscitating equipment available on the premises at all times.

(14) The following shall apply to the use of anesthesia:

(a) preanesthetic examination shall be performed on the patient by the attending veterinarian, unless contraindicated;

(b) the anesthetized animal shall be under supervision at all times and observed until at least the swallowing reflex has returned; and

(c) when major surgery is performed, currently recognized anesthesia shall be used.

(15) Currently recognized procedures for aseptic surgery shall be utilized as follows:

(a) scrubbing of surgical area with cleansing agent and water, unless contraindicated;

(b) disinfecting of the surgical area of the patient where practical;

(c) use of drapes where practical to cover the surgical area of the patient;

(d) appropriate attire and personal sanitation of surgeons and assistants, where practical; and

(e) properly prepared and sterilized surgical packs for each surgical procedure.

KEY: veterinary medicine, licensing
March 8, 2001 **58-1-106(1)**
Notice of Continuation May 12, 1997 **58-1-202(1)**
58-28-1

R199. Community and Economic Development, Community Development.

R199-9. Policy Concerning Enforceability and Taxability of Bonds Purchased.

R199-9-1. Enforceability.

In providing any financial assistance in the form of a loan, the (Board/Committee) representing the State of Utah (the "State") may purchase Bonds or other legal obligations (the "Bonds") of various political subdivisions (interchangeably, as appropriate, the "Issuer" or "Sponsor") of the State only if the Bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Bonds are legal and binding under applicable Utah law.

R199-9-2. Tax-Exempt Bonds.

In providing any financial assistance in the form of a loan, the (Board/Committee) may purchase either taxable or tax-exempt Bonds; provided that it shall be the general policy of the (Board/Committee) to purchase Bonds of the Issuer only if the Bonds are tax-exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the Bonds is exempt from federal income taxation. This does not apply for Bonds carrying a zero percent interest taxation. This tax opinion must be provided by the Issuer in the following circumstances:

a. When Bonds are issued and sold to the State to finance a project which will also be financed in part at any time by the proceeds of other Bonds, the interest on which is exempt from federal income taxation.

b. When (i) Bonds are issued which are no subject to the arbitrage rebate provision or Section 148 of the Internal Revenue Code of 1986 (or any successor provisions of similar intent) (the "Code"), including, without limitation, Bonds covered by the "small governmental units" exemption contained in Section 148 (f) (4) (c) of the Code, and (ii) when Bonds are issued which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of the Bonds.

Notwithstanding the above, the (Board/Committee) may purchase taxable Bonds if it determines, after evaluating all relevant circumstances including the Issuer's ability to pay, that the purchase of the taxable Bonds is in the best interests of the State and the Issuer.

R199-9-3. Parity Bonds.

In addition to the policy stated above, it is the general policy of the (Board/Committee) that Bonds purchased by the (Board/Committee) shall be full parity Bonds with other outstanding Bonds of the Issuer. Exceptions to this parity requirement may be authorized by the (Board/Committee) if the (Board/Committee) makes a determination that

(i) the revenues or other resources pledged as security for the repayment of the Bonds are adequate (in excess of 100% coverage) to secure all future payments on the Bonds and all debt having a lien superior to that of the Bonds and

(ii) the Issuer has covenanted not to issue additional Bonds having a lien superior to the Bonds owned by the (Board/Committee) without the prior written consent of the (Board/Committee), and

(iii) requiring the Issuer to issue parity bonds would cause undue stress on the financial feasibility of the project.

KEY: grants
1987 9-4-305
Notice of Continuation December 23, 1997

R199. Community and Economic Development, Community Development.

R199-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact.

R199-10-1. Purpose.

A. The following procedures are promulgated and adopted by the Permanent Community Impact Fund Board ("Board") of the Department of Community and Economic Development of the State of Utah pursuant to Section 9-4-306(4), UCA 1953 as amended.

B. In the event a project entity or a candidate ("Complainant") submits a request for determination to the Board under Section 11-13-29, UCA 1953 as amended, the Board shall hold a hearing on the questions presented. These proceedings shall be conducted informally, in accordance with the requirements of the Utah Administrative Procedure Act ("Act"), Section 63-46b-4(1), UCA 1953 as amended, unless the Board at its discretion converts the proceeding to a formal proceeding, in accordance with Section 63-46b-4(3) UCA 1953 as amended, if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

C. The only grounds available for relief are those set forth in Section 11-13-29, UCA 1953 as amended, or those reasonably inferred therefrom.

R199-10-2. Commencement of the Procedure Requesting a Determination.

A. Commencement of the procedure to request a determination from the Board shall be conducted in conformity with Section 63-46b-3(3)(a).

1. A complainant requesting a determination from the Board must submit such a request:

a. In writing;

b. Signed by the person invoking the jurisdiction of the Board or by that person's representative; and

c. Including the following information:

1. The names and addresses of all parties to whom a copy of the request for a hearing is being sent;

2. The Board's file number or other reference number;

3. The name of the adjudicative proceeding, if known;

4. The date the request for the hearing was mailed;

5. A statement of the legal authority and jurisdiction under which action by the Board is requested;

6. A statement of relief sought from the Board; and

7. A statement of facts and reasons forming the basis for relief.

B. The Complainant shall file the request for a determination with the Board and at the same time, shall serve a copy of the request upon the party complained against (the "Respondent"). The Complainant shall also mail a copy of the request to each person known to have a direct interest in the request for a determination by the Board.

C. The Respondent shall serve a response within fifteen (15) days after the request is served upon the Respondent. The Respondent may admit, deny or explain the point of view of Respondent as to each allegation in the request. Not to respond to any allegation is to admit that allegation. The Respondent may pose a counteroffer to Complainant's request for relief. Any counteroffer must be supported by reasons. Requests and responses may be directed at multiple parties.

R199-10-3. Notification of Parties.

A. The Board shall promptly give notice by mail to all parties that the hearing will be held, stating the following:

1. The Board's file number or other reference number;

2. The name of the proceedings;

3. Designate that the proceeding is to be conducted informally according to the provisions or rules enacted under Section 63-46b-4 and Section 63-46b-5, UCA 1953 as amended, with citation to Section 63-46b-4 authorizing the designation;

4. State the time and place of the scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate may be held in default; and

5. Give the name, title, mailing address and telephone number of the presiding officer for the hearing.

B. At any time twenty (20) or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms and payments. If, within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the Board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained from the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

R199-10-4. Informal Hearing Procedures.

A. Within forty (40) days after receiving a request for determination, the Board shall hold a public hearing on the questions at issue.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

D. Discovery is prohibited, and the Board may not issue subpoenas or other discovery orders.

E. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

F. Any intervention is prohibited.

G. All hearings shall be open to all parties.

H. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial

review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

I. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

J. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

K. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

L. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-5. Formal Hearing Procedures.

A. At any time prior to issuance of the final order, the Board at its discretion may convert the informal adjudicative hearing into a formal adjudicative hearing, as allowed in Section 63-46b-4(3). The procedures to be followed in such a formal adjudicative hearing are given below.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. A party may be represented by an officer or the party or by legal counsel.

D. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

E. Utah Rules of Evidence shall be in effect; however,

1. Copies of original documents may be introduced into evidence unless objected to for reasons of illegibility or tampering.

2. Hearsay will be considered for its weight but will not be conclusive in and of itself as to any matter subject to proof.

F. Discovery in formal proceedings shall be limited. Because negotiation between the parties shall have been proceeding prior to a request for determination being submitted, the Board or the administrative law judge shall assume that discovery is complete when a request is submitted. However, upon motion and sufficient cause shown, the Board or the administrative law judge may extend the period of discovery.

G. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

H. The Board or the administrative law judge may give a person not a party to the proceeding the opportunity to present oral or written statements at the hearing.

I. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

J. All hearings shall be open to all parties.

K. Intervention into the formal hearing will be allowed on the following basis:

1. Any person not a party may file a signed, written petition to intervene in a formal adjudicative hearing with the Board. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

a. The Board's file number or other reference number;

b. The name of the proceeding;

c. A statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative hearing, or that the petitioner qualifies as an intervenor under any provision of law; and

d. A statement of the relief the petitioner seeks from the Board.

2. The Board or the administrative law judge shall grant a petition for intervention if it determines that:

a. The petitioner's legal interests may be substantially affected by the formal adjudicative hearing; and

b. The interests of justice and the orderly and prompt conduct of the adjudicative hearing will not be materially impaired by allowing the intervention.

3. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

4. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative hearing that are necessary for a just, orderly, and prompt conduct of that hearing. Such conditions may be imposed by the Board or the administrative law judge at any time after the intervention.

L. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision based upon findings of fact and conclusions of law;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

M. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

N. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

O. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

P. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by

the Board prepare a transcript from the Board's record of the hearing.

R199-10-6. Default.

A. The Board or the administrative law judge may enter an order of default against a party if that party fails to participate in the adjudicative proceedings.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

D. After issuing the order of default, the Board or the administrative law judge shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

R199-10-7. Reconsideration by the Board.

Within ten (10) days after the date that a final order is issued by the Board or the administrative law judge, any party may file a written request for reconsideration in accordance with the provisions of Section 63-46b-13, UCA 1953 as amended. Upon receipt of the request, the disposition by the Board of that written request shall be in accordance with Section 63-46b-13(3), UCA 1953 as amended. With the exception of reconsideration, all orders issued by the Board or the administrative law judge shall be final. There shall be no other review except for judicial review as provided below.

R199-10-8. Judicial Review.

An aggrieved party may also obtain judicial review of final orders issued by the Board or by the administrative law judge by filing a petition for judicial review of that order in compliance with the provisions and requirements of Section 63-46b-14 and Section 63-46b-15, UCA 1953 as amended.

KEY: impacted area programs
1988 9-4-305
Notice of Continuation December 23, 1997 11-13-29

R251. Corrections, Administration.
R251-109. Sex Offender Treatment Providers.
R251-109-1. Authority and Purpose.

(1) This rule is authorized by Section 76-5-406.5.

(2) The purpose of the rule is to define the criteria and guidelines for the standards, application and approval process, and program requirements for sex offender treatment providers.

R251-109-2. Definitions.

(1) "Approved provider status" means status as a provider for sex offender services through the Utah Department of Corrections.

(2) "Affiliate approval" means approval of a professional who does not meet experience requirements and is seeking to become approved as a provider.

(3) "Direct clinical experience" means face-to-face contact with patients/clients, direct supervision, training, case coordination and research.

(4) "Formal training" means education and/or supervised experience in the required field; may be provided at an accredited college or university or at seminars or conferences.

(5) "Full disclosure" means the complete discussion during treatment of all previous adjudicated and unadjudicated sexual offenses.

(6) "Provider" means a therapist who has been approved by the Department to provide services to sex offenders under the jurisdiction of the Utah Department of Corrections.

(7) "Provider supervision" means one hour of supervision for every 40 hours of direct client contact with a minimum of one hour supervision per month.

(8) "Screening committee" means group of Department of Corrections employees assigned to screen and approve applications from providers to provide sex offender treatment.

(9) "SO" means sex offender.

(10) "SOP" means Sex Offender Program.

(11) "Transition program" means program designed to help offenders move from residential to non-residential treatment; also to help them move from intensive to progressively less intensive treatment.

(12) "UDC" means Utah Department of Corrections.

R251-109-3. Provider Standards and Requirements.

It is the policy of the Department that:

(1) all potential providers of sex offender treatment shall be screened to ensure they meet the specific established standards and qualifications for providers of sex offender treatment;

(2) providers shall have a basic requirement that full disclosure of all criminal sexual behavior by the offender is a basic requirement for successful completion of therapy;

(3) approved providers must reapply to UDC every three years to renew their approved provider status;

(4) providers shall have a current Utah license to practice therapy in a mental health profession which shall include:

(a) psychiatry;

(b) psychology;

(c) social work; or

(d) marriage and family therapy;

(5) providers' education shall include:

(a) a master's or doctorate degree from a fully accredited college or university in:

(i) social work;

(ii) psychology; or

(b) a medical doctor if board certified/eligible psychiatrist; or

(c) a doctor of osteopathy if board certified/eligible psychiatrist;

(6) within four years immediately preceding application for approval, the provider shall have at least 2,000 hours of direct clinical experience in sex offender treatment, which include:

(a) at least 500 hours of sex offender evaluation experience; and

(b) at least 1,000 hours of sex offender treatment experience;

(7) within three years immediately preceding application, the provider shall have received at least 40 hours of sex offender specific formal training;

(8) licensed professionals and professionals in graduate training and/or post graduate residency who do not meet the experience and training requirements may apply for affiliate approval;

(9) affiliate approval shall require that the applicant arrange for ongoing provider supervision of therapy by an approved provider;

(10) affiliates may provide services as part of a degree program leading to licensure;

(11) required training may be obtained through approved:

(a) documented conferences;

(b) symposia;

(c) seminars; or

(d) other course work;

(12) the training shall be directly related to the treatment and evaluation of sex offenders;

(13) the training may include:

(a) behavioral/cognitive methods;

(b) reconditioning and relapse prevention;

(c) use of plethysmograph examinations;

(d) use of polygraph examinations;

(e) group therapy;

(f) individual therapy;

(g) sexual dysfunction;

(h) victimology;

(i) couples and family therapy;

(j) risk assessment;

(k) sexual addiction;

(l) sexual deviancy; and

(m) ethics and professional standards;

(14) prior to and during approval, all providers must agree to abide by reporting and other requirements established by UDC and the laws and statutes of the state of Utah;

(15) reporting requirements shall include the offender's:

(a) progress in therapy;

(b) prognosis; and

(c) risk to the community; and

(16) failure to comply with reporting requirements may result in a provider being removed from the approved list.

R251-109-4. Application Process.

(1) All individuals providing services are required to be approved.

(2) Each applicant shall provide all of the required documentation at the time of submission. If not, the packet shall be returned to the provider.

(3) Individuals or affiliates who are supervised by an approved individual or agency may begin providing services pending approval once UDC receives their application packet.

(4) Reapplication shall include:

(a) documentation demonstrating continuing education and training in sex offender specific treatment of not less than forty hours every three years;

(b) current licensure with the state of Utah;

(c) hours of therapy/supervision per year provided; and

(d) information on any changes in modality of treatment.

(5) Failure to reapply shall result in the provider being removed from the approved provider list.

R251-109-5. Approval Process.

(1) It is the policy of UDC that all therapists providing services to sex offenders under the jurisdiction of UDC shall have been reviewed and approved by UDC.

(2) Approval may be suspended by either the provider or UDC.

(3) A provider shall be removed from the list of approved providers by written request to UDC.

(4) UDC may suspend approval for:

(a) failure to reapply;

(b) failure to comply with provider protocol;

(c) suspension of clinical licensure;

(d) failure to meet provider standards; or

(e) criminal conviction; or

(f) other legitimate penological reasons as determined by the division director.

(5) Providers who are not approved may appeal that decision to the screening committee within thirty days of denial.

(6) Appeals must contain specific documentation of why the denial was inaccurate.

R251-109-6. Program Requirements.

(1) It is the policy of UDC that each provider meet certain accepted standards for treatment of sex offenders.

(2) Treatment programs for sexual offenders convicted of crimes against persons shall have the following intake components available:

(a) complete psycho-sexual evaluation, to include:

(i) sex offender specific testing;

(ii) assessment of personality and intelligence using testing instruments recognized in the treatment community as valid tools; and

(iii) penile plethysmograph testing, with stimuli which conforms to state statute, for male offenders and polygraph examinations for female offenders to determine arousal patterns and establish baselines.

(3) Polygraph examination shall be used for male offenders when deemed appropriate by the provider or UDC staff.

(4) Following assessment, the provider shall submit a written report to UDC staff including:

(a) findings of testing including specifics on offender's risk to community safety;

(b) the offender's suitability for treatment;

(c) a proposed treatment plan; and

(d) the cost to the offender.

(5) The standard treatment shall include:

(a) sex offender groups;

(b) individual therapy;

(c) psycho-educational classes;

(d) ongoing transition program; and

(e) a minimum of one monthly progress report to UDC staff.

(6) An intensive treatment program shall be available which includes:

(a) two weekly sex offender group sessions;

(b) individual weekly session;

(c) psycho-educational classes;

(d) on-going transition program; and

(e) a minimum of one monthly progress report to UDC staff.

(7) Intensive treatment shall be conducted on a minimum of three different days per week.

(8) When treatment is terminated unsuccessfully, the provider shall:

(a) notify UDC staff prior to termination; and

(b) provide a written report to the UDC staff within seven days of termination, addressing:

(i) reason for termination;

(ii) progress of the offender to date;

(iii) prognosis of the offender; and

(iv) the offender's risk to community.

(9) When treatment is terminated successfully, the provider shall:

(a) notify UDC staff of the recommendation to terminate therapy; and

(b) provide a written report to UDC staff addressing:

(i) issues addressed in therapy;

(ii) the offender's compliance with the treatment plan;

(iii) progress made by the offender;

(iv) prognosis of the offender; and

(v) results of a current (less than 90 days old), if appropriate, plethysmograph or polygraph.

(10) As requested, the provider shall submit written reports to UDC, courts and the Board of Pardons and Parole, as applicable.

(11) With reasonable notification, therapists shall appear in court or before the Board of Pardons and Parole as needed.

KEY: mental health, psychiatric personnel, psychotherapy
April 5, 1996 64-13-10
Notice of Continuation March 27, 2001

R251. Corrections, Administration.
R251-110. Sex Offender Notification.
R251-110-1. Authority and Purpose.

(1) This rule is authorized under Section 77-27-21.5.

(2) The purpose of the rule is to define the process for providing sex offender notification to petitioners and authorized individuals.

R251-110-2. Definitions.

(1) As used in this section:

(a) "authorized individual" means an employee of the Department, a regularly employed peace officer, a law enforcement officer, or a staff person of the State Office of Education, in the performance of assigned duties;

(b) the terms "Department", "Notification", and "Petitioner" are as defined in Section 77-27-21.5; and

(c) "location" means a reasonable geographic area not to exceed a mailing zip code and one adjoining zip code.

R251-110-3. Information Request Process.

(1) Authorized individuals are not required to petition the Department for information regarding sex offenders, but may submit a request on a need-to-know basis.

(2) Petitioners may request sex offender information from the Department Records Bureau.

(a) Requests shall be in writing with a return address and telephone number.

(b) Requests shall be sent to the Utah Department of Corrections, Records Bureau, 155 E. 6100 S., Suite 300, Murray, Utah 84107-7208.

(c) If a petitioner changes his residence after having submitted a request, but prior to receiving a response from the Department, it is the petitioner's obligation to file another petition with a current return address and telephone number.

(d) Petitioners may not obtain information by telephone.

R251-110-4. Criteria for Approval.

(1) A petitioner shall:

(a) be a victim of a convicted sex offender or be an individual residing at an address with the same, or an adjoining postal zip-code area in which a sex offender is suspected to reside; and

(b) provide the necessary information.

(2) Authorized individuals shall:

(a) make the request as part of the performance of their duties; and

(b) provide the necessary information.

(3) Petitioners may be denied by the Department for:

(a) insufficient information;

(b) refusal to sign the petition form;

(c) requesting information outside the location of the petitioner's residence;

(d) failure to meet the criteria of a petitioner; or

(e) other legitimate governmental interests.

R251-110-5. Instructions for Use of the Information.

(1) Sex offender registration information is classified as private or protected and persons using such information are subject to the access and disclosure provisions of Sections 63-2-202 and 63-2-206.

(2) Petitioners shall agree in writing to abide by the disclosure requirements of Section 63-2-101, et seq.

KEY: sex crimes, notification
October 18, 1996 64-13-10
Notice of Continuation March 27, 2001 77-27-21.5

R251. Corrections, Administration.
R251-301. Employment, Educational or Vocational Training for Community Correctional Center Offenders.
R251-301-1. Authority and Purpose.

(1) This rule is authorized by Sections 63-46a-3, 64-13-10 and 64-13-14.5.

(2) The purpose of this rule is to provide the requirements for employers who employ offenders. This rule also provides the requirements for offenders' participation in an educational or vocational training program.

R251-301-2. Definitions.

(1) "Center" means a community correctional halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Educational or vocational training" means that an offender is participating or is enrolled in an educational or vocational training program that is recognized as being fully accredited by the state, which includes academic, applied-technology or correspondence courses, and in which the student is matriculated or has declared intent to be involved in program-completion or degree-attainment within a reasonable period of time.

(3) "Minimum wage" means compensation paid for hours worked in accordance with federally established guidelines.

(4) "Offender" means a person under the jurisdiction of the Department of Corrections residing in a community correctional center.

R251-301-3. Policy.

It is the policy of the Department that:

(1) Center offenders should be employed or participate in educational or vocational training on a full-time basis;

(2) offenders participating in educational or vocational training should have sufficient means to meet their financial obligations; and

(3) employers and offenders shall be informed in writing of the Center's rules governing employment, including:

(a) Offenders shall be accountable for all time spent away from the Center;

(b) employers shall contact Center staff when they need the offender to work overtime or work on a day off;

(c) offenders shall not consume alcoholic beverages;

(d) offenders shall have legitimate employment and shall not be allowed to work for less than the prevailing minimum wage, nor under substandard conditions;

(e) employers shall contact Center staff if the offender terminates or is terminated from his position, is excessively late, or leaves work early;

(f) offenders shall not borrow money nor secure an advance in salary without prior approval of Center staff;

(g) offenders shall notify employers of illness, absence or tardiness;

(h) Center staff shall contact the employer periodically to monitor the offender's performance and to verify the offender's work hours;

(i) within two weeks, employers shall send to the Center staff a signed acknowledgment of the rules and willingness to notify Center staff of any violations; and

(j) employers shall contact Center staff with any questions or concerns.

KEY: corrections, halfway houses, training
March 13, 2001 **63-46a-3**
Notice of Continuation February 5, 2001 **64-13-10**
64-13-14.5

R251. Corrections, Administration.
R251-709. Transportation of Inmates.
R251-709-1. Authority and Purpose.

(1) This rule is authorized under Section 64-13-10.

(2) This rule addresses requirements regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department.

R251-709-2. Definitions.

"Restraint" means handcuffs, handcuff cover, locking devices, leg irons, waist chains or other locking and restraining devices.

"Run" means any transport of an inmate off prison property.

R251-709-3. Policy.

It is the policy of the Department that during the transportation of inmates the primary goal is to ensure adequate security to prevent escapes and to prevent harm to officers or other persons.

R251-709-4. Court Transportation.

(1) Inmates shall not be allowed to visit with relatives, friends or members of the general public during transportation, while in a medical facility, courtroom, or while waiting, in transit to or from a medical facility or courtroom.

(2) Requests from attorneys to detain or temporarily relocate inmates for consultations, visits with spouse, parents, or other family members, shall be denied unless the presiding judge specifically orders the visits.

(3) Attorneys requesting consultation with inmates after a hearing may do so for five minutes in a court holding cell unless the presiding judge specifically orders otherwise.

(4) The inmate's attorney may provide civilian clothing for inmates appearing in a jury trial.

R251-709-5. Medical Security Procedures.

(1) The transportation officer shall maintain custody of the inmate at all times during medical transportation runs. If, during the medical consultations, the doctor requests the officer to leave the room and the room has no escape routes, the officer may wait just outside the door but, if the room has an escape route, the officer shall remain with the inmate.

(2) The transportation officer shall remove a particular restraint upon the doctor's orders if the removal of that restraint is required to perform a medical procedure; only that particular restraint shall be removed and it shall be immediately reapplied upon completion of the medical procedure.

(3) Except in life-threatening emergencies, the transportation officer shall not assist nor participate in any medical procedure or other assistance to patients or inmates.

R251-709-6. Transporting by Air.

When transporting by air, the transportation officer shall contact the transporting airline prior to the transportation run to confirm their policies regarding inmate restraints, boarding and alighting policies, firearms on the aircraft, and other inmate transportation issues.

KEY: prisons, corrections, security measures
January 21, 1997 64-13-10
Notice of Continuation March 27, 2001

R277. Education, Administration.

R277-469. Instructional Materials Commission Operating Procedures.

R277-469-1. Definitions.

A. "Pilot program" or "pilot use" means the use by a school or schools on a limited basis of previously unreviewed instructional materials and materials not yet submitted to the Instructional Materials Commission for formal review, consistent with Section R277-469-9.

B. "Pilot approval" means approval authorized under Section R277-469-10 using the form developed and provided by the USOE.

C. "Instructional materials" means systematically arranged text materials, in harmony with the State Core Curriculum framework and courses of study, which may be used by students as principal sources of study and which cover any portion of the course. These materials:

(1) shall be designed for student use;

(2) may be accompanied by or contain teaching guides and study helps;

(3) shall appear on the list of state-adopted instructional materials or be approved for pilot use by the Instructional Materials Commission.

D. "State Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools.

E. "Board" means the Utah State Board of Education.

F. "USOE" means the Utah State Office of Education.

G. "Commission" means the Instructional Materials Commission.

H. "Previously unreviewed materials" means instructional materials that have neither been approved by the Instructional Materials Advisory Commission through the formal approval process nor approved as pilot materials under Section R277-469-9.

I. "International Baccalaureate" means college level work limited in subject areas balancing humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

J. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

K. "ASCII" means American Standard Code for Information Interchange from which Braille versions of all or part of the instructional materials can be produced.

L. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Its operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint a Instructional Materials Commission and directs the Commission to recommend instructional materials for adoption by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and provisions for final, pilot, and limited approvals of instructional materials.

R277-469-3. Use of State Funds for Instructional Materials.

A. Districts may use funds designated for state instructional materials only:

(1) for materials on the approved instructional materials list;

(2) for materials approved under Section R277-469-10 for pilot use; or

(3) for advanced placement, International Baccalaureate, concurrent enrollment, and college-level course materials. Use of these materials may require parental permission consistent with R277-474.

B. Schools or school districts that use any funding source to purchase materials that have not been approved through the formal Commission process or consistent with this rule, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

C. Free instructional materials:

(1) may be used as student instructional materials only consistent with the law and this rule; and

(2) shall be reviewed and approved by school districts prior to use.

R277-469-4. Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Subsection 53A-14-102(1).

B. Members shall serve four year staggered terms beginning with the 1998 appointments with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. All materials used in Utah schools shall be reviewed by the Commission consistent with this rule or qualify under the exceptions to review categories of Section R277-469-6.

B. The Commission may review materials in the following subject areas on timelines as determined by the Commission based upon district needs and requests and using forms and procedures provided by the USOE:

(1) Bilingual education/English as a second language (elementary and secondary),

(2) Character education (elementary and secondary),

(3) Driver education (secondary),

(4) Early childhood education,

(5) Fine arts (elementary and secondary),
(6) Foreign language (elementary and secondary),
(7) Health education and fitness (elementary and secondary),
(8) Information technology (elementary and secondary),
(9) Language arts (elementary and secondary),
(10) Mathematics (elementary and secondary),
(11) Science (elementary and secondary),
(12) Social studies (elementary and secondary),
(13) Applied technology/vocational subjects,
(14) Technology education,
(15) Technology and industrial arts,
(16) Special education/resource materials, and
(17) Human sexuality instructional materials.

C. The Commission's determination of a materials category for review purposes is final.

D. Unless materials meet the exceptions of this rule, or are reviewed consistent with this rule by the Commission, they may not be purchased with state or federal funds.

E. Commission review of material is available in April and October of each year.

R277-469-6. Review and Adoption Categories.

A. Materials may be considered for review and designated under the following categories. They may be purchased with state funds and used as follows:

(1) Adopted: Instructional materials that may be used or purchased and are in alignment with content, philosophy and instructional strategies of the State Core Curriculum which may be used by students as principle sources of study and provide comprehensive coverage of course content.

(2) Limited: Instructional materials that may be used or purchased and are in limited alignment with the State Core Curriculum or are narrow or restricted in their scope and sequence. Use of these materials should be supplemented with additional materials to assure State Core Curriculum coverage.

(3) Teacher Resource: These materials may be used or purchased for or by teachers for use as resource material only.

(4) Reviewed, but not Adopted: Instructional materials may not be used or purchased that are not in alignment with the State Core Curriculum, inaccurate in content, include misleading connotations, contain undesirable presentation, are in conflict with existing law and rules, or are unsuitable for use by students.

(5) the following materials are not reviewed, but may be purchased consistent with the law and this rule and are subject to district review:

(a) advanced placement materials,
(b) International Baccalaureate materials,
(c) concurrent enrollment materials,
(d) library or trade books,
(e) reference materials,
(f) teachers' professional materials which are not components of an integrated instructional program.

(6) Galley proofs or unfinished copies shall not be reviewed.

B. When an integrated instructional program, as determined by the Commission, is submitted for review, the program shall be reviewed and evaluated collectively. Review shall take place once all parts of the program are submitted.

R277-469-7. Criteria for Selection of Instructional Materials.

A. Instructional materials shall:

(1) be consistent with State Core Curriculum.
(2) provide an objective and balanced viewpoint on issues.
(3) include enrichment and extension possibilities.
(4) be appropriate to varying levels of learning.
(5) be accurate, factual and research-based.
(6) be arranged chronologically or systematically, or both.
(7) reflect the pluralistic character and culture of the American people.
(8) be free from sexual, ethnic, age, gender or disability stereotyping.
(9) provide accurate representation of diverse ethnic groups.
(10) be of acceptable technical quality.

B. Upon request by the district, a publisher of instructional materials shall furnish computer diskettes of materials for literary subjects in the American Standard Code for Information Interchange (ASCII).

C. USOE monitoring:

(1) The USOE may require a district to provide a report of instructional materials purchased by the district in the previous four years.

(2) The USOE may initiate a formal or informal audit of instructional materials purchased.

R277-469-8. Directives and Procedures for Publishing Companies Seeking to Sell Instructional Materials to School Districts.

A. The Commission shall not designate any individual, corporation or business as an official instructional materials depository.

B. Publishers desiring to sell adopted materials to Utah schools or districts shall have adopted materials on deposit at an instructional materials distributor in the business of selling instructional materials to schools or districts in Utah.

C. Depository agreements may be made between publishers of materials and local vendors.

D. Revised adopted materials:

(1) If a revised edition of adopted materials retains the original title and authorship, the publisher may request its substitution for the edition currently adopted providing that:

(a) the original contract price and contract date do not change;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes.

(2) If Subsection R277-469-8D is not satisfied, a new edition shall be submitted for adoption as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for an adopted edition with assistance from the state subject area specialist.

E. Publishers' Increase in Contract Prices

(1) Publishers may request one increase in contract prices

to be effective during either the third or fourth year of the contract for instructional materials adopted by the Commission.

(2) Price increases shall be limited to the consumer price index (CPI) for the last fiscal year unless good cause is demonstrated consistent with designated deadlines and forms provided by the Commission.

R277-469-9. Pilot Use of Instructional Materials.

A. Pilot approval for previously unreviewed instructional materials shall be given for no more than:

(1) ten percent of the districts in the state; and

(2) ten percent of the schools in a single district with the grade levels (elementary, junior high/middle or high school) for which the materials are designated;

B. Publishers shall present a completed pilot application form when applying to the USOE for pilot approval.

C. Publishers shall present proof of pilot approval from the USOE to the school or district prior to distribution of materials.

D. The Commission shall not review materials submitted by a publisher who has acted in violation of this rule for a two year period beginning January 1 of the year following the year in which the violation occurred.

E. Samples (defined as one copy or one set of an instructional program) may be given to a school or district upon request by administrators or teachers for preview purposes only.

F. Publishers, in cooperation with districts using the materials, may be required to provide an evaluation to the USOE completed by the district of pilot materials based on criteria and forms provided by the USOE.

G. Pilot materials may only be used for one school year anywhere in the state under pilot approval prior to seeking final approval through the formal Commission process.

H. The USOE may require a report of pilot program materials used in district schools in the past year.

I. Districts or schools or both shall assume any costs of pilot materials not approved for further use by the Commission.

J. All materials used in pilot programs that are not approved through the Commission process for continued use shall be collected by the district at the end of the pilot period and disposed of.

R277-469-10. Request for Reconsideration.

A. A request for reconsideration is a single additional opportunity provided to a publisher for each submission and review of instructional materials with which the publisher disagrees.

B. The request for reconsideration procedure is as follows:

(1) A request for reconsideration shall be received by the USOE only from a publisher.

(2) The publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(3) The publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next adoption cycle.

(4) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until approved through the official Commission process.

(5) A publisher may be asked to send a second set of sample materials to the USOE.

(6) Any written information provided by the publisher shall be available to the advisory committees during the second review.

(7) After the second review by the subject area advisory committee, the publisher shall be notified of the completion of the appeals process and the decision after the scheduled Board meeting.

(8) Materials shall be voted on by the Commission during the next scheduled meeting. A revised status of instructional materials shall be made after Board approval the following month.

(9) The publisher shall receive a second letter stating that recommendations are official and a copy of the new evaluation. Evaluations may now appear on the Internet if materials are adopted.

C. Publishers shall be given only one opportunity to request that materials be reconsidered.

KEY: instructional materials
March 6, 2001 **Art X, Sec 3**
53A-14-101 through 53A-14-106
53A-1-401(3)

R277. Education, Administration.

R277-514. Board Procedures: Sanctions for Educator Misconduct.

R277-514-1. Definitions.

In addition to terms defined in Section 53A-6-103, the following definitions apply:

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Board" means the Utah State Board of Education.

C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

D. "Licensure Committee" means a committee of the Board which reviews issues relating to licensure of educators.

E. "Commission" means the Utah Professional Practices Advisory Commission.

F. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

G. "Party" means the complainant or the respondent.

H. "Recommended disposition" means a recommendation for resolution of a complaint.

I. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

J. "Superintendent" means the State Superintendent of Public Instruction.

R277-514-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide an appeals process for decisions made by UPPAC, including a review by the Superintendent; and to specify the procedures under which the Board may take action against an educator's license for misconduct.

R277-514-3. Administrative Review by Superintendent.

A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:

(1) suspension of an educator's license for two years or more, or

(2) revocation of an educator's license,

B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.

C. The request for review shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

D. If the Superintendent finds:

(1) that procedural errors have occurred which may have violated fairness or due process issues, the Superintendent shall refer the case back to the Commission for reconsideration as to whether or notthe findings, conclusions or decisions of the Commission are supported by a preponderance of the evidence, or that the recommended disposition presents a reasonable resolution of the case. After reconsideration is completed, the Superintendent shall notify all parties to the case, and refer the matter to the Board for final disposition consistent with this rule.

R277-514-4. Licensure Committee Procedures.

A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary of the Professional Practices Advisory Commission for action under R686-100.

B. A case referred to the Board by the Commission, following review by the Superintendent, or upon appeal under R686-100-17C, shall be assigned to the Licensure Committee.

C. The Licensure Committee shall review the case file and the recommendation of the Commission. If the Licensure Committee finds that there have not been serious procedural errors on the part of the Commission, that the findings and conclusions of the Commission are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Licensure Committee shall approve the Commission's action and forward the case to the full Board for its consideration.

D. If the Licensure Committee finds that there is insufficient information in the case file to complete its work, the Licensure Committee may direct the parties to appear and present additional evidence or clarification.

E. If the Licensure Committee finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Licensure Committee shall refer the case back to the Commission to correct the errors.

F. If the Licensure Committee determines that the findings or conclusions of the Commission are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Licensure Committee may refer the case back to the Commission for further action or may, in the alternative, prepare its own findings, conclusions, or recommended disposition.

G. If the Licensure Committee prepares its own findings, conclusions, or recommendation, then the Licensure Committee shall forward its findings, conclusions, or recommendation to

the Board together with the file as received from the Commission.

R277-514-5. Board Procedures.

A. Upon receiving a case from the Licensure Committee, the members of the Board may accept the recommendation of the Licensure Committee or may review the case file, findings, conclusions, and recommended disposition. If the Board finds that there have not been serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.

B. If the Board finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.

C. If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.

D. If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.

E. If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.

F. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.

G. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.

H. The decision of the Board is final.

R277-514-6. Notification Requirements and Procedures.

A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.

B. A local superintendent shall notify the Commission if an educator is found, pursuant to an administrative or judicial action, to be guilty of:

(1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or

(2) immoral behavior.

C. Failure to comply with Subsection A or B constitutes unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator has surrendered a license or allowed it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

KEY: disciplinary actions, professional competency, teacher licensure*

April 3, 2000	**Art X Sec 3**
Notice of Continuation September 12, 1997	**53A-6-405**
	53A-6-307
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-204. Emission Standards: Smoke Management.
R307-204-1. Purpose and Goals.

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health and visibility of prescribed fire and wildland fire.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Burn Plan" means the plan required for each fire ignited by managers or allowed to burn.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Class I Area" means Zion National Park, Bryce National Park, Capitol Reef National Park, Arches National Park, Canyonlands National Park.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicate other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager"means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Maintenance Area" means an area that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Used for Resource Benefits (WFURB)" means naturally ignited wildland fire that is managed to accomplish specific prestated resource management objectives in predefined geographic areas.

R307-204-4. General Requirements.

(1) Management of On-Going Fires. If, after consultation with the land manager, the executive secretary determines that a prescribed fire, wildland fire used for resource benefits, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the executive secretary.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the executive secretary on forms provided by the Division of Air Quality, and shall include the following information for all fires including those smaller than 50 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, and ignition method;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires.

A prescribed fire that covers less than 20 acres per burn and results in air emissions less than 0.5 tons of particulate matter per day shall be ignited only when the clearing index is 500 or greater.

R307-204-7. Large Prescribed Fires.

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn or results in air emissions of 0.5 tons or more of particulate matter per day, the land manager shall submit to the executive secretary a burn plan, including a fire prescription, two weeks before the beginning of the burn window.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn or results in air emissions of 0.5 tons or more of particulate matter per day, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives;

(c) Any Class I or Non-attainment Area within 15 miles;

(d) Any sensitive receptor and distance and direction in degrees from the project site;

(e) Planned mitigation methods;

(f) The smoke dispersion model used and results;

(g) The estimated amount of total particulate matter anticipated;

(h) A description of how the public will be notified;

(i) A map, preferably with a scale of 1:62,500, depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(j) Safety and contingency plans for addressing any smoke intrusions; and

(k) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 10:00 a.m. at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the executive secretary approves or conditionally approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 8:00 a.m. the following business day.

(4) Daily Emissions Report. By 8:00 a.m. on the day following the prescribed burn, for each day of prescribed fire activity covering 50 acres or more, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of whether the fire has met the criteria of the fire prescription; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

R307-204-8. Requirements for Wildland Fire with Potential for Use for Resource Benefits.

(1) Burn Approval Required.

(a) The land manager shall notify the executive secretary by the close of business of the first day of any wildland fire that covers 20 acres or more. The notification shall include the following information:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day; and

(vi) Wilderness or Resource Natural Area designation, if applicable.

(b) The following information shall be submitted to the executive secretary 48 hours after submittal of the information required by (1)(a) above:

(i) Burn plan and anticipated emissions;

(ii) A map, preferably with a scale of 1:62,500, depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the executive secretary.

(c) The executive secretary's approval of the smoke management element of the burn plan shall be obtained before managing the fire as a wildland fire used for resource benefits.

(2) Daily Emission Report for Wildland Fire Used for Resource Benefits. By 8:00 a.m. on the business day following fire activity covering 50 acres or more, the land manager shall submit to the executive secretary the daily emission report on the form provided by the Division of Air Quality, including the following information:

(a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;

(b) UTM coordinate;

(c) Dates and times of the start and end of the burn;

(d) Black acres by wildland fuel type;

(e) Estimated proportion of wildland fuel consumed by wildland fuel type;

(f) Proportion of moisture in the wildland fuel by size class;

(g) Emission estimates;

(h) Level of public interest or concern regarding smoke; and

(i) Conformance to the burn plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the burn plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

KEY: air quality, fire*, smoke*, land manager*
March 6, 2001 19-2-104(1)(a)

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

R414-303. Coverage Groups.

R414-303-1. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

The definitions in R414-1 apply to this rule.

(1) The Department shall provide Medicaid coverage to individuals as described in 42 CFR 435.116, 435.120, 435.122, 435.131 through 435.133, 435.135, 435.138, 435.210, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.541, 1998 ed., which are incorporated by reference. The Department shall provide coverage to individuals as described in 20 CFR 416.901 through 416.1094, 1998 ed., which is incorporated by reference. The Department shall provide coverage to individuals as required by Sections 470 through 479, 1634(b), (c) and (d), 1902(a)(10)(E) and 1902(e) of Title XIX of the Social Security Act.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) If a client has been denied SSI or SSA and claims to have become disabled since the SSI or SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(4) The age requirement for A Medicaid is 65 years of age.

(5) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(6) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act for a given year. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

R414-303-2. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.115, 435.211, 435.217, 435.223, 435.233.9, 435.233.90, and 435.300 through 435.310, 1997 ed., and 45 CFR 211, 1997 ed., and Title XIX of the Social Security Act as in effect January 1, 2000, Sections 1931(a), (b), and (g), which are incorporated by reference.

(2) The following definitions apply to this rule:

(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, 1999 that requires the Department to use the eligibility criteria of the pre-welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).

(c) "Diversion" means a one time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are 1931 FM qualified, as described in 45 CFR 233.39, 233.90, and 233.100, 1998 ed., which are incorporated by reference.

(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.

(5) For unemployed two-parent households, the Department shall not require the primary wage earner to have an employment history.

(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.

(7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently included in a FEP household or a 1931 Family Medicaid household, the child shall be included in the FEP or 1931 FM case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time

employment.

(8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(9) Temporary absence from the home for purposes of schooling, vacation, or medical treatment shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences which are caused solely by reason of employment, school, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(11) The Department imposes no suitable home requirement.

(12) Medicaid assistance is not continued for a temporary period while the effects of deprivation of support are being overcome.

(13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration or the Social Security Administration;

(c) provide a Medical Report Form 21 completed by a physician or licensed/certified psychologist which indicates that the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-3. 12 Month Transitional Family Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 1999, which are incorporated by reference.

(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months, because they received a FEP Diversion payment.

R414-303-4. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112, 1998 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-5. Foster Care.

The Department adopts 42 CFR 435.115(e)(2), 1998 ed., which is incorporated by reference. The Department complies with Public Law 74-271(472).

R414-303-6. Subsidized Adoptions.

The Department adopts 42 CFR 435.115(e)(2), 1998 ed., which is incorporated by reference. The Department complies with Public Law 74-271(472).

R414-303-7. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 1998 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-8. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, 1998 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 1997 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-9. Prenatal and Newborn Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Section 1902(a) and (l), Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, and Section 26-18-3.1.

(2) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(3) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(4) At the initial determination of eligibility for Prenatal Medicaid applicants who have $5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed $3,367. The payment

must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

(5) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(6) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX)(A) of the Social Security Act.

(7) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the woman in a high risk category.

(8) Children born after September 30, 1983 may qualify for the newborn program through the month in which they turn 19.

(9) Children born before October 1, 1983 may qualify for the Newborn program through the month in which they turn 18.

R414-303-10. PG Medicaid.

The Department complies with Public Law 74-271(1902)(a)(10)(A)(i)(III).

R414-303-11. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1997 ed., which are incorporated by reference. The Department complies with Public Law 74-271(1915)(c).

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable.

(6) To determine spenddown the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 1999.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for spenddown will be the amount of income that exceeds the personal needs allowance after allowable deductions.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-12. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1998 ed., which are incorporated by reference. The Department complies with Public Law 74-271(1915)(c).

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws. Spenddown is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-13. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1998 ed., which are incorporated by reference. The Department complies with Public Law 74-271(1915)(c).

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and temporarily extended from December 27, 1998 through March 27, 1999, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-11, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-11.

R414-303-14. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department will operate this program statewide initially with a limited number of available slots.

(2) Eligibility for services under this waiver require that the individual has medical need resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(3) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(4) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-12.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-15. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, 1998 ed., which are incorporated by reference. The Department complies with Title XIX of the Social Security Act, Section 1915(c).

(2) The waiver shall be limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

KEY: income, coverage groups*
March 13, 2001 **26-18**
Notice of Continuation February 6, 1998

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

R414-304. Income and Budgeting.

R414-304-1. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(2) "Basic maintenance standard (BMS)" means the income level for eligibility based on the number of family members who are counted in the medical assistance unit.

(3) "Benefit month" means a month in which an individual is eligible for Medicaid.

(4) "Federal poverty guidelines" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for means tested federal programs.

(5) Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(6) "Poverty-related program" means a medical assistance program that uses a percentage of the federal poverty guideline for the household size involved to determine eligibility

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Pub. L. No. 105-33(4735) enacted August 5, 1997 which is incorporated by reference. The Department adopts Pub. L. No. 104-204(1805)(c) and (d) enacted September 26, 1996 and 105-306(7)(a) and (c) enacted October 28, 1998 which is incorporated by reference.

(2) The following definitions apply to this section:

(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.

(b) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

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

(d) "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.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment which is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

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

(5) For A, B and D Medicaid two-thirds of child support received 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 or in-kind.

(6) For A, B and D Institutional Medicaid court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned to the child.

(7) 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.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or 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 difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Reimbursements 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.

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

(12) 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:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(13) The following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse shall not be considered in determining Medicaid eligibility of a

person who receives SSI. SSI recipients who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A or D Medicaid as described below.

(i) If only one spouse is aged or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size or the BMS. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to the two-person poverty guideline. If it exceeds the limit, then income shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income shall be compared to a one-person BMS to calculate the spenddown.

(iii) If an aged or disabled person has a spouse who is blind, then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to the poverty guideline for a two-person household to determine eligibility for the aged or disabled spouse.

(A) If the countable income does not exceed the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B)or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.

(d) The Department shall determine household size and whose income counts for B Medicaid as described below.

(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.

(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income shall then be compared to the BMS for a two-person household to calculate the spenddown.

(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and compared to the BMS for a one-person household.

(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse shall be compared to the BMS for one.

(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.

(e) The Department shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household. SSI income shall not be counted.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled, does not receive Part A Medicare, or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(f) If any parent in the home receives SSI, the income of neither parent shall be considered to determine a child's

eligibility for B or D Medicaid.

(g) 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.

(14) For institutional Medicaid, the Department shall only count the client in the household size and only count the client's income to determine contribution to cost of care.

R414-304-3. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20 (4)(ii), and 233.51, 1998 ed., which are incorporated by reference. The Department adopts Pub. L. No. 105-33 (4735) enacted August 5, 1997 which is incorporated by reference.

(2) The following definitions apply to this section:

(a) A "a bona fide loan" is a loan 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) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) $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:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

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

(8) Cash gifts that do not exceed $30 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.

(9) Deferred income is countable income when it is received by the client if receipt can be reasonably anticipated.

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

(11) Home energy assistance is not countable income.

(12) 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.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income if the payments are not available on demand.

(15) FEP, Working Toward Employment Program payments, and Refugee Cash Assistance are not countable income.

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

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

(18) 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 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.

(19) The income of an alien's sponsor is not countable income.

(20) 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.

R414-304-4. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1110 through 416.1112, 1999 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The 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 shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

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

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

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses for A, B, or D category programs that use a percentage if the federal poverty guideline as an eligibility income limit. For self-employed individuals who have actual

allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) To determine countable net income from self-employment, the state shall allow the cost of doing business to be deducted from the gross income for A, B, or D category programs that do not use a percentage of the federal poverty guideline as an eligibility income limit. However, no deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses;

(g) depreciation.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

R414-304-5. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(BA), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 1999 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 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 a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses for 1931 Medicaid and for Family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(6) To determine countable net income from self-employment, the state shall allow the cost of doing business to be deducted from the gross income for Family Medicaid categories that do not use a percentage of the federal poverty guideline as an eligibility income limit. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child care costs 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.

(8) For Family Institutional Medicaid, the Department shall deduct child care costs 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.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility for FEP cash assistance because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned

income of the specified relative for six months after the FEP assistance ends to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income and the household has a dependent child living in the home, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

R414-304-6. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 1998 ed., which is incorporated by reference.

(2) The Department shall allow health insurance premiums providing coverage for anyone in the family or the BMS as deductions in the month of payment. The entire payment shall be allowed as a deduction and will not be prorated. The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(3) Medicare premiums shall not be allowed as deductions if the state reimburses the client.

(4) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) 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.

(b) The medical bill shall not be paid by Medicaid or a third party.

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

(5) A medical expense shall not be allowed as a deduction more than once.

(6) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(7) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(8) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(9) 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 shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed.

(10) Pre-paid medical expenses shall not be allowed as deductions.

(11) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(12) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(13) For A, B and D Medicaid institutional costs shall be allowed as deductions if the services are medically necessary. The Department of Health shall be responsible for deciding if services for institutional care are not medically necessary.

(14) No one shall be required to pay a spenddown of less than $1.

(15) 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 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.

R414-304-7. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725 and 435.726, 1998 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999, which are 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 one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow health insurance premiums only for the institutionalized or waiver eligible client and only if paid with

the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as a deduction in the month due. The payment shall not be pro-rated.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as a deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or a third party;

(c) 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.

(6) A medical expense shall not be allowed as a deduction more than once.

(7) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as deductions.

(9) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

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

(12) The personal needs allowance shall be equal to $45.

(13) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(14) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(15) 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.

(16) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(17) To determine a deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to $150. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is $20. Clients shall not be required to verify utility costs more than once in a certification period.

(18) 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 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.

R414-304-8. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 1998 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 1998 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(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 process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly 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 using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount 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 shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week 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. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) 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.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be 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.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for retroactive benefit months, except when the income was not being received during, and was not intended to cover, the retroactive months.

R414-304-9. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount the current Medicaid Income Standards (BMS) shall apply.

(3) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(4) The current Medicaid income standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-10. A, B and D Medicaid, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for A or D poverty-related Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive

Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D poverty-related Medicaid; and QMB, SLMB, and QI programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304–2.

(6) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(7) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-11. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 1998 ed., which are incorporated by reference.

(2) Except for determinations under 1931 Family Medicaid, 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 shall be considered an ineligible child and shall not be counted as part of the household size for deciding what income limit will be applicable to the family. Income and resources of an excluded child shall not be considered when determining eligibility or spenddown.

(3) The Department shall not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent shall not be counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(4) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child shall be included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children shall be included in the household size.

(5) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents shall be included in the household size.

(6) Parents who have relinquished their parental rights shall not be included in the household size.

(7) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(8) If a person is "included" in the household size, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS level or, in the case of poverty-related programs, which poverty guideline level will apply to determine eligibility for the client or family.

R414-304-12. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 1998 ed., which is incorporated by reference.

(3) The Department shall base eligibility and spenddown 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, 1998 ed., which is incorporated by reference.

KEY: financial disclosure, income, budgeting
March 13, 2001 26-18-1
Notice of Continuation February 6, 1998

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) The Department adopts 42 CFR 435.735, 435.840 through 435.845, 1997 ed., and 20 CFR 416.1201 through 416.1202 and 416.1204 through 416.1266, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1613(a)(4) and 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e) of the Compilation of the Social Security Laws, in effect January 1, 1998. The Department adopts Pub. L. No. 105-306(7)(b) and (c) which is incorporated by reference.

(2) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) The resource limit is $2,000 for a one person household, $3,000 for a two member household and $25 for each additional household member.

(5) The Department bases Medicaid eligibility on all available resources owned by the client. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources.

(6) Any resource or the interest from a resource, which is held within the rules of the Uniform Gift to Minors Act is not countable. Any money from the resource which is given to the child as unearned income is countable.

(7) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

(8) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, the director may grant one extension. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(9) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(11) For an institutionalized individual, a home or life estate is not considered an exempt resource. Therefore, a home which is transferred to a trust becomes a countable resource or constitutes a transfer of a resource. A home or life estate so transferred could continue to be excluded under the provisions of Section 1924 of the Compilation of the Social Security Laws, 1993 ed., U.S. Government Printing Office, Washington D.C. as amended by OBRA '93.

(12) For A, B and D Medicaid the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(13) For A, B and D Institutional Medicaid where the resources are determined to exceed the limits for Medicaid, eligibility shall not be given conditioned upon disposition of resources as described in 20 CFR 416.1240, 1991 ed.

(14) A previously unreported resource may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. However, it cannot be exempted retroactively prior to November 1982 or earlier than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial.

(15) One vehicle is exempt if it is used at least four times per calendar year to obtain necessary medical treatment.

(16) The Department allows SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside resources that allow them to purchase work-related equipment or meet self support goals. These resources are excluded.

(17) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(18) Life estates.

(a) For non-institutional Medicaid life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988

2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

1. The Department adopts 45 CFR 206.10(a)(vii), 233.20(a)(3), and 233.51(b)(2), 1997 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e) of the Compilation of the Social Security Laws, in effect January 1, 1998. The Department adopts Pub. L. No. 105-33(4735) and Pub. L. No. 105-306(7)(b) and (c) which are incorporated by reference.

(2) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the clients own benefit.

(3) The resource limit is $2,000 for a one person household, $3,000 for a two member household and $25 for each additional household member.

(4) Except for the exclusion for a vehicle, the methodology for treatment of resources is the same for all medically needy and categorically needy individuals.

(5) Medicaid eligibility is based on all available resources owned by the client. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources.

(6) The resources of a sanctioned household member are counted.

(7) The resources of a ward which are controlled by a legal guardian are counted as the ward's resources.

(8) If a resource is potentially available, but a legal impediment to making it available exists, it is not countable until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(9) Except for determining countable resources for 1931 Family Medicaid, the maximum exemption for the equity of one car is $1,500.

(10) Maintenance items essential for day-to-day living are not countable resources.

(11) Life estates are not countable resources if the life estate is the principal residence of the applicant or recipient. If the life estate is not the principle residence see Subsection

R414-305-1(18).

(12) The resources of an ineligible child are not counted.

(13) The value of the lot on which the home stands is not counted if the lot does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is a countable resource.

(14) Water rights attached to a home and lot are not counted.

(15) Any resource, or interest from a resource, which is held within the rules of the Uniform Gift to Minors Act is not countable. Any money from a resource which is given to the child as unearned income is countable.

(16) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, the director may grant one extension. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(17) Retroactive benefits received from the Social Security Administration are not counted for the first 6 months after receipt.

(18) A $1,500 burial and funeral fund exemption is allowed for each eligible household member. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial.

(19) The resources of an alien's sponsor are not considered available to the alien.

(20) Business resources required for employment or self employment are not counted.

(21) For 1931 Family Medicaid households, the state shall disregard the equity value of one vehicle that is used to provide transportation for the household and meets the definition of a "passenger vehicle" as defined in 26-18-2(6). If the vehicle does not meet the definition of a "passenger vehicle" as defined in 26-18-2(6), the state shall disregard $1500 of the equity of one vehicle used to provide transportation for the household.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

1. The Department adopts Section 1924 of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

(2) The resource limit is $2,000.

(3) The Department shall determine the joint owned resources of married couples as available to each other. One half of the joint owned resources shall count towards the institutional client's resource eligibility determination.

(4) When a client is unable to comply with spousal impoverishment rules and claims undue hardship because of an uncooperative spouse or because the spouse cannot be located, assignment of support rights shall be done by signing the Form 048.

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:

(a) The client completes the Form 048.

(b) The client will not be able to get the medical care needed without Medicaid.

(c) The client is at risk of death or permanent disability without institutional care.

(6) The client may be eligible for Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client signs the Form 048.

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1998.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, of up to 90 days is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client.

R414-305-4. Medicaid Qualifying Trusts.

The Department adopts Section 1902 of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.

R414-305-5. Transfer of Resources for A, B and D Medicaid and Family Medicaid.

There is no sanction for the transfer of resources.

R414-305-6. Transfer of Resources for Institutional Medicaid.

(1) The Department adopts Subsection 1917(c) of the Compilation of the Social Security Laws, in effect January 1, 1998, which is incorporated by reference.

(2) The average private-pay rate for nursing home care in Utah is $3,118 per month.

(3) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision except for exempt trusts established under section 1917(d) of the Compilation of the Social Security Laws, January 1, 1998 ed., that provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder.

(4) No sanction is imposed when the total value of a whole life insurance policy is irrevocably assigned to the state; and the recipient is the owner of and the insured in the policy; and no further premium payments are necessary for the policy to remain in effect. At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(a) Up to $7,000 can be distributed to cover burial and

funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and/or the burial and funeral funds for the client can not exceed $7,000.

(b) An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(c) Any amount remaining after payments are made as defined in a. and b. will be made to a beneficiary named by the client.

(5) Clients that claim an undue hardship as a result of a transfer of resources must meet both of the following conditions:

(a) The client has exhausted all reasonable legal means to regain possession of the transferred resource. It is considered unreasonable to require the client to take action if a knowledgeable source confirms that it is doubtful those efforts will succeed. It unreasonable to require the client to take action more costly than the value of the resource.

(b) The client is at risk of death or permanent disability if not admitted to a medical institution or Waiver service. This decision will be based upon the client's medical condition and the financial situation of the client. Income of the client, client's spouse, and parents of an unemancipated client shall be used to decide if the financial situation creates undue hardship.

(6) After Institutional Medicaid eligibility is determined, the client's spouse, not living in the institution, may transfer any resource to any person without impacting the Medicaid eligibility of the institutionalized spouse.

(7) The portion of an irrevocable burial trust that exceeds $7,000 is considered a transfer of resources. The value of any fully paid burial plot, as defined in R414-305-1(2)(a), shall be deducted from such burial trust first before determining the amount transferred.

(8) If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively, so that they do not overlap. A sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends. If resources were transferred before August 11, 1993, applicable sanction periods for those transfers may overlap.

R414-305-7. Home and Community-Based Services Waiver Resource Provisions.

(1) The resource limit is $2,000.

(2) Following the initial month of eligibility, continued eligibility is determined by counting only the resources that belong to the client.

(3) For married clients spousal impoverishment resource rules apply as defined in R414-305-3.

R414-305-8. QMB, SLMB, and QI Resource Provisions.

(1) The Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.

(2) The resource limit is the same for all medically needy individuals.

(3) The QMB, SLMB, and QI resource limit is $4,000 for an individual and $6,000 for a couple.

KEY: medicaid
March 13, 2001 **26-18**
Notice of Continuation February 6, 1998

R432. Health, Health Systems Improvement, Licensing.
R432-1. General Health Care Facility Rules.
R432-1-1. Legal Authority.

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

R432-1-2. Purpose.

The purpose of this rule is to define the standard terms for all licensed health care facilities and agencies.

R432-1-3. Definitions.

(1) Terms used in this rule are defined in Section 26-21-2. In addition:

(2) "AWOL/Elopement" means absence without leave; an unauthorized departure from the facility.

(3) "Abortion" is defined in Section 76-7-301(1).

(4) "Abuse" is defined in 62A-3-301 as:

(a) attempting to cause, or intentionally or knowingly causing physical harm, or intentionally placing another in fear of imminent physical harm;

(b) physical injury caused by criminally negligent acts or omissions;

(c) unlawful detention or unreasonable confinement;

(d) gross lewdness;

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(5) "Act" means the Health Facility Licensure and Inspection Act, Title 26, Chapter 21.

(6) "Active Treatment" means the habilitative program of care for ICF/MR patients described in 42 CFR Part 483 (1983) that addresses training in daily living, self-help, and social skills; activities; recreation; appropriate staffing level; special resident programs; program evaluation; nursing services; documented resident surveys and progress; and social services.

(7) "Activities of Daily Living" ("ADL") means those personal functional activities required for an individual for continued well-being; including eating/nutrition, mobility, dressing, bathing, toileting, and behavior management. ADLs are divided into the following levels:

(a) "Independent" means the resident can perform the ADL without help.

(b) "Assistance" means the resident can perform some part of an activity, but cannot do it entirely alone.

(c) "Dependent" means the resident cannot perform any part of an activity; it must be done entirely by someone else.

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

(9) "Affiliation" means a relationship, usually signified by a written agreement, between two organizations, under the terms of which one organization agrees to provide specified services and personnel to meet the needs of the other, usually on a scheduled basis.

(10) "Aftercare" means post-institution services designed to help a patient maintain or improve on the gains made during inpatient treatment.

(11) "Aide or Attendant" means a person employed to assist in activities of daily living and in the direct personal care of patients.

(12) "ADAAG" means the Americans with Disability Act Accessibility Guidelines, 28 CFR 36, Appendix A, July 1993.

(13) "Ambulatory" means a person who is capable of achieving mobility sufficient to exit his residence without assistance of another person.

(14) "Annual Report" means a document containing annual statistical information from a licensed health facility or agency.

(15) "Assessment" means a process of observing, testing and evaluating a patient in order to obtain information.

(16) "Bathing Facility" means a bathtub or shower.

(17) "Bed Capacity" means the maximum number of beds which the facility is licensed to offer for patient care.

(18) "Behavior Management" means a planned, systematic application of methods and findings of behavioral science with the intent of reducing observable negative behaviors.

(19) "Birthing Room" means a room and environment designed, equipped and arranged to provide for the care of a woman and newborn and to accommodate her support person(s) during the process of vaginal birth.

(20) "Certificate of Completion" means a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma; to a person who passes a challenge exam for that same course of study; or to a person whose out-of-state credentials and certificate are acceptable to the Board.

(21) "Certified" means a health facility or agency which holds a current license issued by the Department, and which also meets the standards established for participation in federally funded programs, such as Medicare.

(22) "Certified Nurse Aide" means a nursing assistant who has completed a federally approved training program and proved competency through testing, thereby he is entitled to be employed in a licensed health care facility or agency.

(23) "Certified Registered Nurse Anesthetist" means a registered nurse who is licensed by the Utah Department of Commerce under Title 58 Chapter 31b.

(24) "Certified Nurse Midwife" means an individual licensed to practice by the Utah Department of Commerce under Title 58, Chapter 44a.

(25) "Certified Social Worker" means an individual licensed by the Utah Department Commerce under Title 58, Chapter 60.

(26) "Chronic Noncompliance" means three or more violations of a single licensing rule requirement which are documented in five inspections, including complaint investigations, surveys, or follow-up inspections on plans of correction, or any combination of them.

(27) "Clinical Note" means a dated, written notation by a member of the health team which indicates contact with a patient and describes any of the following: signs and symptoms of dysfunction, treatment given or medication administered, the patient's reaction, changes in physical or emotional condition, or services provided.

(28) "Clinical Staff" means the physicians and certified providers appointed by the governing authority to practice

within the health facility or agency.

(29) "Consultant" means an individual who provides professional services either upon request or on the basis of a prearranged schedule, usually on a contract basis, who is neither a member of the employed staff of the facility or agency, nor whose services are provided within the terms of an affiliation agreement.

(30) "Continuous Noncompliance" means three or more violations of a single licensing rule requirement occurring within a 12-month time period.

(31) "Contract Services" means services purchased by a health facility or agency under a contract with an individual or a provider whose personnel are not salaried employees of the facility or agency.

(32) "Control Station" means a central office or area for charting, drug preparation, and other patient-care tasks normally performed at a nursing station.

(33) "Critical Care Unit" means a special physical and functional unit for the segregation, concentration and close or continuous nursing observation and care of patients who are critically, seriously, or acutely ill.

(34) "Day Treatment" means training and habilitation services delivered outside the patient's place of residence which are intended to aid the vocational, pre-vocational, and self-sufficiency skill development of an ICF/MR patient. These services must meet active treatment requirements and must be coordinated and integrated with the active treatment program of the facility or agency.

(35) "Dentist" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 69.

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

(37) "Developmental Disability" means a severe, chronic disability that meets all of the following conditions:

(a) Is attributable to: cerebral palsy, epilepsy, autism; or any other condition, other than mental illness, closely related to mental retardation which results in impairment of general intellectual functioning adaptive behavior, or requires treatment or services similar to those required for mentally retarded persons;

(b) Is manifested before the person reaches the age of 22;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three or more of the following areas of major activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; or

(vi) capacity for independent living.

(38) "Dietitian" means a person who is certified pursuant to Title 58, Chapter 49.

(39) "Direct Services" means services provided by salaried employees of a health facility or agency, as opposed to services provided by contract.

(40) "Direct Supervision" means the critical observation and guidance by a qualified person of another person's activities or course of action.

(41) "Discharge" means the point at which the patient's involvement with a facility or agency program is terminated and the facility or agency program no longer maintains active responsibility for the care of the patient.

(42) "Distinct Part" means a discrete, physically definable entity located within a structure constructed and equipped according to applicable codes which:

(a) provides within the structure the necessary unique physical facilities, equipment, staff, and supplies to deliver all basic services that are offered to and needed for the diagnosis, therapy, and treatment of patients, and to comply with licensing standards;

(b) provides or arranges for necessary administrative and non-unique, non-clinical, ancillary type services such as dietary, laundry, housekeeping, business office and medical records; and

(c) protects the rights of patients including freedom from unwanted intrusion by visitors, guests, staff, and residents of adjacent licensed facilities and use occupancies.

(43) "Documentation" means written supportive information, records, or references to verify information required by law or rule.

(44) "Drug History" means identifying all of the drugs used by a patient, including prescribed and unprescribed drugs.

(45) "Emergency" means any situation or event that threatens or poses a threat to the occupants of the facility or agency, or prohibits one or more occupants (staff, patient, or visitor) from receiving services normally offered by the facility or agency, or requires action not normally performed by the facility or agency staff.

(46) "Emotional or psychological abuse" means deliberate conduct that is directed at a person through verbal or nonverbal means and that causes the individual to suffer emotional distress or to fear bodily injury, harm, or restraint.

(47) "Environment" means the physical and emotional atmosphere including architectural design, furnishings, color, privacy, and safety, as well as other people.

(48) "Executive Director" means the Executive Director of the Utah Department of Health.

(49) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(50) "Free-standing Urgent Care Center," as distinguished from a private physician's office or emergency room setting, means a facility which provides out-patient health care service (on an as-needed basis, without appointment) to the public for diagnosis and treatment of medical conditions which do not require hospitalization or emergency intervention for a life-threatening or potentially permanently disabling condition. Diagnostic and therapeutic services provided by a free-standing urgent care center include: a medical history physical examination, assessment of health status and treatment for a variety of medical conditions commonly offered in a physician's office.

(51) "Governing Authority or Governing Body" means the board of trustees, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the health care facility or agency.

(52) "Governmental Unit" means the state, or any county,

municipality, or other political subdivision of any department, division, board or other agency of any of the foregoing.

(53) "Guardian" means a person legally responsible for the care and management of a person who is considered by law to be incompetent to manage his own affairs.

(54) "Habilitation" means techniques and treatment which actively build and develop new or alternative styles of independent functioning and promote new behavior which results in greater self-sufficiency and sense of well-being.

(55) "Health Care Facility or Agency" means any facility or agency licensed under the authority of the Health Facility Committee and designated as such in Subsection 26-21-2(10).

(56) "Health Services Supervisor" means a person with a professional medical license or certificate, such as a nurse, social worker, physical therapist, or psychologist, responsible for the development, supervision, and implementation of a written health care plan for each resident.

(57) "Homemaker" means a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(58) "Hospitalization" means an inpatient stay of at least 24 hours, or an overnight stay or emergency care, except a stay at a freestanding ambulatory surgical center that meets the requirements of R432-500.

(59) "ICD-9-CM" means the International Classification of Diseases, 9th revision, Clinical Modification, 1986.

(60) "Imminent Danger" means a situation or condition which presents a substantial likelihood of death or serious physical or mental harm to a patient or resident in the facility or agency.

(61) "Inpatient Program" means treatment provided in a suitably equipped setting that provides services to persons who require care that warrants 24-hour supervision.

(62) "Intake" means the administrative and assessment process for admission to a program.

(63) "Interdisciplinary Team" means a group of staff members composed of representatives from different professions, disciplines, or services.

(64) "Involuntary Medication" means medication which is prescribed by the physician but not taken willingly by the patient, and is administered due to compelling medical reasons.

(65) "Joint Commission" means the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(66) "Lavatory" means a plumbing fixture designed and equipped for handwashing purposes.

(67) "License" means the certificate issued by the Department of Health for the operation of the facility or agency. This document constitutes the authority to receive patients and residents and to perform the services included within the scope of the rule and as specified on the license.

(68) "Licensed Practical Nurse (LPN)" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 31b.

(69) "Licensed Practitioner" means a health professional whose license allows diagnosis, treatment, and prescribing practices within the scope of the license and established protocols.

(70) "Licensee" means the person or organization who is granted a license to operate a health facility or agency and who has ultimate authority and responsibility for the operation, management, control, conduct, and functioning of the facility or agency.

(71) "Licensing Agency" means the Bureau of Licensing of the Utah Department of Health.

(72) "Licensure" means the process of obtaining official or legal permission to operate a health facility or agency.

(73) "Living Unit" means the area or part of a facility where residents sleep and may include dining and other resident activity areas.

(74) "Low Risk Maternal Mother" means a woman who is in good general health throughout pregnancy and birth and who meets the criteria for low risk birth services as developed by the clinical staff and approved by the governing board and licensing agency for a Birthing Center.

(75) "Maladaptive (negative) Behavior" means behavior that is either self-injurious, or dangerous to others, or environmentally destructive, demonstrating a reduction in or lack of ability necessary to adjust to environmental demands.

(76) "Medical Equipment and Supplies" means items used for therapeutic or diagnostic purposes essential for patient care, such as dressings, catheters, or syringes.

(77) "Medical Staff" means, the organized body composed of all specified professional personnel, appointed by the governing body and granted privileges to practice in the facility or agency.

(78) "Medication" means any drug, chemical compound, suspension, or preparation suitable for internal or external use by persons for the treatment or prevention of disease or injury.

(79) "Mental Retardation" means significantly subaverage general intellectual functioning resulting in, or associated with, concurrent impairments in adaptive behavior and manifested during the developmental period. Significantly subaverage general intellectual functioning is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test. Developmental period is defined as the period between conception and the 18th birthday.

(80) "Mental Disease" means any disease listed as a mental disorder in the ICD-9-CM excluding the codes for senility or organic brain syndrome (290 through 294.9 and 310 through 310.9), the codes for adjustment reaction (309); the codes for psychic factors associated with diseases classified elsewhere (316); and the codes for mental retardation (317 through 319). Codes 314 through 315.9 may also be excluded for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons. Codes 309 and 316 are also excluded.

(81) "Mobile" means a person who is able to take action for self-preservation under emergency conditions with the assistance of supportive equipment such as crutches, braces, walkers, or wheelchairs, but without the assistance, except for verbal instructions, from other persons.

(82) "Neglect" means the same as 62A-3-301(10).

(83) "New Construction" means any of the following:

(a) New medical or health care facilities licensed under these rules;

(b) Addition(s) to an existing building;

(c) Alteration(s) or modification(s) (other than strictly

repair and maintenance) costing more than $3,000 or that affect the structure, electrical or mechanical system of a health care facility.

(84) "Non-Ambulatory" means unable to walk without assistance of other persons.

(85) "Nursing Care" means assistance provided to sick or disabled individuals, by or under the direction of licensed nursing personnel, for their health care needs.

(86) "Nursing Home" means any facility licensed by the Department as a nursing care facility that provides licensed nursing care and related services to residents who need continuous health care and supervision.

(87) "Occupational Therapist" means a person currently licensed by the Utah Department of Commerce under Title 58, Chapter 42a.

(88) "Oral Surgeon" means a person who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accrediting body approved by the U.S. Office of Education and is licensed by the Utah Department of Commerce to practice dentistry.

(89) "PRN medication" means medication which is administered pro re nata. Pro re nata means as needed. The time of medication administration is determined by the resident's need.

(90) "Parent Facility" means all free-standing health facilities under a single ownership licensed under Section 26-21-2 except home health agencies. The parent facility includes:

(a) the main structure, wings, or detached buildings where a service within the scope of the facility's license is offered and any detached building used for storage, heating or cooling equipment located on the main grounds bounded by a city, county or a state street or road, or a property line; and

(b) any structure located outside the main facility grounds connected to the main facility by a heating or cooling system or by a covered walkway where a service is provided within the scope of the parent facility's license.

(91) "Patient" means a resident or person receiving care in a health care facility or agency. Patient, client or resident terms are interchangeable meaning a person who is receiving needed services.

(92) "Patient Care Plan" means an integrated plan of care developed for the patient.

(93) "Pediatric Patients" means infants, children, adolescents, and young adults up to the age of 18.

(94) "Personal Care" means assistance provided to residents in activities of daily living.

(95) "Personal Care Aide" means a person who assists patients or residents in the activities of daily living and emergency first aid; and who may be supervised by a licensed nurse.

(96) "Personal Resource Funds" means monies received by a patient from a variety of sources which the patient may spend as needed or desired.

(97) "Personnel" means individual(s) in training or employed by the health care facility or agency.

(98) "Pharmacist" means a person currently licensed by the Utah Department of Commerce to practice pharmacology pursuant to Title 58, Chapter 17a.

(99) "Physical Therapist" means a person currently licensed by the Utah Department of Commerce to practice under Title 58, Chapter 24a.

(100) "Physician" means a person who is licensed to practice medicine and surgery by the Utah Department of Commerce under Section 58-67-301, the Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act, or a physician in the employment of the government of the United States who is similarly qualified.

(101) "Place of Residence" means the place a patient makes his home. This may be a house, an apartment, a relative's home, housing for the elderly, a retirement home, an assisted living facility, or a place other than a health care facility which provides continuous nursing care.

(102) "Plan of Care or Plan of Treatment" are interchangeable terms which mean a written plan based on assessment data or physician orders that identifies the patient's needs, who shall provide needed services and how often, treatment goals, and anticipated outcomes.

(103) "Podiatrist" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 5a.

(104) "Policies and Procedures" means a set of rules adopted by the governing body to govern the health care facility or agency's operation.

(105) "Practitioner" means a registered nurse, with advanced or specialized training, who is licensed by Utah Department of Commerce, Title 58, Chapter 31b.

(106) "Prognosis" means a statement given as:

(a) the likelihood of an individual achieving stated goals;

(b) the degree of independence likely to be achieved; or

(c) the length of time to achieve goals.

(107) "Program" means a general term for an organized system of services designed to address the treatment needs of the patient.

(108) "Protected Living Arrangement" means provision for food, shelter, sleeping accommodations, and supervision of activities of daily living for persons of any age who are unable to independently maintain these basic needs and functions.

(109) "Provider" means a supplier of goods or services.

(110) "Public Agency" means an agency operated by a state or local government.

(111) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(112) "Qualified Mental Retardation Professional (QMRP)" means a person who has specialized training or one year of experience in treating or working with the mentally retarded including any one of the following: psychologist with a master's degree from an accredited program; licensed physician; educator with a bachelor's degree in education from an accredited program; social worker with a bachelor's degree in social work from an accredited program or a field other than social work and at least three years of social work experience under the supervision of a qualified social worker; licensed physical or occupational therapist; licensed speech pathologist or audiologist; registered nurse; therapeutic recreation specialist who is a graduate of an accredited program and is licensed to perform recreational therapy under the provisions of Title 58,

Chapter 40; Rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

(113) "Quality of Care" means the provision of patient treatment, including medical or nursing care as well as restorative therapies.

(114) "Quality of Life" means how a patient experiences the state of existing and functioning in the facility environment, and is related to the human and humane processes involved in normal human functioning, including rights and freedoms.

(115) "Recovery," for birthing centers, means that period or duration of time starting at birth and ending with the discharge of a client from the birthing center, or the period of time between the birth and the time a mother leaves the premises of the birthing center.

(116) "Recreational Therapist" means any person licensed to perform recreational therapy under the provisions of Title 58, Chapter 40.

(117) "Referred Outpatient" means a person who is receiving his medical diagnosis, treatment, or other health care services from one or more sources outside the hospital, but who receives from the hospital diagnostic tests or examinations ordered by health care practitioners, legally permitted to order such tests and examinations, and to whom the hospital reports findings and results.

(118) "Refurbish" means to clean or otherwise change the appearance without making significant changes in the existing physical structure of a facility.

(119) "Registered Nurse" means any person who is registered and licensed by the Utah Department of Commerce to practice as a registered nurse under Title 58, Chapter 31.

(120) "Rehabilitation" means a program of care designed to restore a patient to a former capacity.

(121) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

(122) "Remodel" means to reconstruct or to make significant changes in the existing physical structure of a facility.

(123) "Representative" means a person employed by the Department.

(124) "Request for Hearing" means any clear expression in writing by a provider requesting an opportunity to appeal a Department action following R432-30.

(125) "Resident Living" means residential services provided by an ICF/MR facility.

(126) "Responsible Person" means an individual, relative, or close friend designated in writing by the resident, or a court-appointed guardian or person with durable power of attorney, who assists the resident and assumes responsibility for the resident's well-being and for any care not provided by the facility or agency.

(127) "Restrictive Procedures" means a class of procedures designed to reduce or eliminate maladaptive behaviors including:

(a) restricting an individual's movement;

(b) restricting an individual's ability to obtain positive reinforcement; and

(c) restricting an individual's ability to participate in programs.

(128) "Safety Device" means a protective device used to offer protection from inadvertent acts (such as falling out of bed) as well as deliberate acts (such as removing a nasogastric tube).

(129) "Seclusion" means a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(130) "Self Administration of Medication" means the act by which a resident independently removes an individual dose from a properly labeled container and takes that medication. The resident must know the medication type, dosage and frequency of administration.

(131) "Service Delivery Area" means any area in the facility where a specific service or group of services is organized, performed or carried out. For example the dietary services area includes the kitchen; patient care services delivery area includes patient rooms, corridors, and adjacent areas.

(132) "Service Pattern" means a continuum of medical and psychological needs expressed as a type and used in evaluation for appropriate placement and treatment purposes.

(133) "Social Service Worker (SSW)" means a person currently licensed by the Utah Department of Commerce to function as a social service worker under Title 58, Chapter 60.

(134) "Social Worker, Certified (CSW)" means a person currently licensed by the Utah Department of Commerce to practice social work under Title 58, Chapter 60.

(135) "Specialty Hospital" means a hospital which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(136) "Speech-Language Pathologist" means a person licensed by the Utah Department of Commerce to practice speech-language pathology pursuant to Title 58, Chapter 41.

(137) "Substantial Noncompliance" means any occurrence of a Class I violation, or the occurrence of one or more Class II violations resulting in continuous noncompliance, or chronic noncompliance with one or more rule requirements in the administrative rules specific to the health care facility licensure category.

(138) "Summary Report" means a compilation of pertinent facts from the clinical notes regarding a patient, usually submitted to the patient's physician as part of a plan of treatment.

(139) "Supervision" means guidance of another person or persons by a qualified person to assure that a service, function, or activity is provided within the scope of a license, certificate, job description, or instructions.

(140) "Support Person" means the individual(s) selected or chosen by a mother to provide emotional support and to assist her during the process of labor and childbirth.

(141) "Surgeon General" means the surgeon general of the United States public health service.

(142) "Therapist" means a professionally trained licensed or registered person (such as a physical therapist, occupational therapist, or speech therapist), who is skilled in applying

treatment techniques and procedures under the general direction of a physician.

(143) "Training and Habilitation Services" means services intended to improve or aid the intellectual, sensorimotor, and emotional development of a patient or resident.

R432-1-4. Identification Badges.

(1) Health care facilities and agencies shall ensure that the following persons, shall wear an identification badge:

(a) professional and non-professional employees who provide direct care to patients; and

(b) volunteers.

(2) The identification badge shall include the following:

(a) the person's first or last name; however, the badge does not have to reveal the persons full name; and

(b) the person's title or position, in terms generally understood by the public.

KEY: health facilities
November 6, 2000 26-21-2
Notice of Continuation January 20, 1999

R432. Health, Health Systems Improvement, Licensing.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.

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

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

(a) is administered by a parent facility within the scope of the parent facility's current license,

(b) is in a location not contiguous with the parent facility,

(c) does not qualify for licensing under Section 26-21-2, and

(d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

(a) location of the remote facility (street address);

(b) capacity of the remote facility;

(c) license category of the parent facility;

(d) service to be provided at the remote facility (must be a service authorized under the parent facility license);

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) Uniform Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;

(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;

(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

R432-2-7. License Fee.

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved capacity,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

(1) Each standard license shall expire at midnight, on the last day of the month, 12 months from the anniversary date of the date of the initial license unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-12. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new or replacement facility.

(b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-13. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity.

(b) change in name of facility.

(c) change in license category.

(d) change of license classification.

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-14. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) make provision for the safe keeping of records.

(c) return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

(a) the location and date of discharge for all residents,

(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and

(c) the date and time that the facility complied with the closure order.

R432-2-15. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months. It may issue no more than one provisional license to any health facility in any 12-month period.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.

(1) A conditional license is a remedial license issued to a licensee found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;

(b) more than three cited repeat Class I or II violations from the previous year; or

(c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.

A standard license is a license issued to a licensee if:

(1) the licensee meets the conditions attached to a provisional or conditional license;

(2) the licensee corrects the identified rule violations; or

(3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

R432-2-18. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah

Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

KEY: health facilities

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Notice of Continuation January 11, 1999	**26-21-11**
	26-21-12
	26-21-13

R432. Health, Health Systems Improvement, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.
R432-3-1. Legal Authority.

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

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the Bureau of Licensing in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission), Accreditation Association for Ambulatory Health Care (AAAHC) or Community Health Accreditation Program in lieu of the annual licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) Joint Commission Statement of Construction;

(c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) annual and follow up inspections,

(b) complaint investigation,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular annual inspection shall apply.

R432-3-4. Statement of Findings.

(1) The Department or its designee shall inspect each facility or agency at least once during each year that a license has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I and III violations are served immediately.

(b) Statements for Class II violations are served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an expired license.

(4) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(5) The Statement of Findings shall include:

(a) the statute or rule violated;

(b) a description of the violation;

(c) the facts which constitute the violation; and

(d) the classification of the violation.

R432-3-5. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

(a) how the required corrections shall be accomplished;

(b) who is the responsible person to monitor the correction is accomplished; and

(c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for

rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed or unlicensed health facility or agency is served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed -upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

(a) the gravity of the violation;

(b) the effort exhibited by the licensee to correct violations;

(c) previous facility or agency violations; and

(d) other relevant facts.

(11) The Department shall serve a facility or agency with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

(a) The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed licensing category.

(b) The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category.

(c) If the facility or facility fails to submit the Request for Agency Action/License Application as specified, the Department shall issue a written Notice of Agency Action ordering closure of the facility or agency.

(d) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

(ii) Class II deficiencies that indicate a pattern of care and have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

(d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency; or

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients.

(2) If the Department imposes a restriction or prohibition on admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

(b) The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to

patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

R432-3-7. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

(a) state the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.

(4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the Statement of Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

R432-3-9. Medicare/Medicaid Certification.

(1) The Department may accept survey and complaint investigation findings of the Bureau of Medicare/Medicaid Program Certification and Resident Assessment as its own in the conduct of the Bureau of Licensing responsibilities under state law.

(2) The Bureau of Licensing may review all Statements of Findings and Plans of Correction, including surveys, follow up surveys, and complaint investigation actions, completed by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment. The Statements of Findings and Plans of Correction may be reviewed for compliance with state rules to include:

(a) assessment of chronic non-compliance history in accordance with Subsection R432-1-3(26);

(b) assessment of continuous non-compliance history in accordance with Subsection R432-1-3(30).

KEY: health facilities

June 23, 2000	**26-21-5**
Notice of Continuation January 11, 1999	**26-21-14 through 26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-4. General Construction.
R432-4-1. Legal Authority.

This rule is adopted pursuant to Title 26 Chapter 21 for General Hospitals; Specialty Hospitals; Ambulatory Surgical Facilities; Nursing Care Facilities; Inpatient Hospices; Birthing Centers; Abortion Clinics; and Small Health Care Facilities, Levels I, II and III.

R432-4-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving services by establishing construction standards.

R432-4-3. General Design.

(1) The licensee is responsible for assuring compliance with this section.

(2) When testing and certification compliance can only be verified through written documentation, the licensee must maintain documentation in the facility for Department review.

(3) Additional requirements for individual health care facility categories are included in the individual category construction rules sections of the Health Facility Licensure Rules, R432. If conflicts exist between R432-4 and individual category rules, the individual category rules govern.

(4) If conflicts exist between applicable codes, the most restrictive code applies.

(5) When other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the more restrictive requirements apply.

(6) The licensee shall ensure the building complies with the functional requirements for the applicable licensure classification and shall ensure provisions are made for all facilities and equipment necessary to meet the care and safety needs of all clients served, when construction is completed.

R432-4-4. Site Location.

(1) The site of the licensed health care facility shall be accessible to both community and service vehicles, including fire protection apparatus.

(2) Facilities shall ensure that public utilities are available.

R432-4-5. Site Design.

(1) Paved roads shall be provided within the property for access to all entrances, service docks and for fire equipment access to all exterior walls.

(2) Paved walkways shall be provided for pedestrian traffic.

(3) Paved walkways shall be provided from every required exit to a dedicated public way.

(4) Hospitals with an organized emergency service shall have well marked emergency access to facilitate entry from public roads or streets serving the site. Vehicular or pedestrian traffic shall not conflict with access to the emergency service area. The emergency entrance shall be covered to ensure protection for patients during transfer from automobile or ambulance.

R432-4-6. Parking.

(1) Parking shall be provided in accordance with local zoning ordinances.

(2) If local zoning ordinances do not exist, Section 3.2.B Parking, from Guidelines for Design and Construction of Hospital and Health Care Facilities 1996-1997 Edition shall apply and is adopted and incorporated by reference.

(3) The requirements of the Americans with Disabilities Act Accessibility Guidelines, (ADAAG) for handicapped parking access shall apply and parking spaces for the disabled shall be directly accessible to the facility without the need to go behind parked cars.

R432-4-7. Environmental Pollution Control.

Public Law 91-190, National Environment Policy Act, requires the site and project be developed to minimize any adverse environmental effects on the neighborhood and community. Environmental clearances and permits shall be obtained from local jurisdictions and the Utah Department of Environmental Quality.

R432-4-8. Standards Compliance.

(1) The following standards are adopted and incorporated by reference:

(a) Illuminating Engineering Society of North America, IESNA, publication RP-29-95, Lighting for Hospitals and Health Care Facilities, 1995 edition;

(b) The following chapters of the National Fire Protection Association Life Safety Code, NFPA 101, 1997 edition:

(i) Chapter 12, New Health Care Occupancies;

(ii) Chapter 13, Existing Health Care Occupancies.

(2) The following codes and standards apply to health care facilities. The licensee shall obtain clearance from the authority having jurisdiction and submit documentation to the Department verifying compliance with these codes and standards as they apply to the category of health care facility being constructed:

(a) Local zoning ordinances;

(b) Uniform Building Code, 1997 edition;

(c) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993);

(d) Uniform Mechanical Code, 1997 edition;

(e) International Plumbing Code, 1997 edition;

(f) Uniform Fire Code, 1997 edition.

(g) R313. Environmental Health, Radiation Control, 1994;

(h) R309. Environmental Health, Drinking Water and Sanitation, 1994;

(i) R315. Environmental Health, Solid and Hazardous Waste, 1994;

(j) NFPA 70, National Electric Code, 1999 edition;

(k) NFPA 99, Standards for Health Care Facilities, 1996 edition;

(l) NFPA 110, Emergency and Standby Power Systems, 1988 edition;

(m) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals, 1997 edition;

(n) National Council on Radiation Protection (NCRP), Medical X-ray, Electron beam and Gamma Ray Protection for Energies up to 50 MeV Equipment Design, Performance and Use, Report 102, 1989;

(o) National Council on Radiation Protection (NCRP), Radiation Protection Design Guidelines for 0.1-100, MeV Particle Accelerator Facilities, Pamphlet 51, 1977;

(p) National Council on Radiation Protection (NCRP), Medical X-ray and Gamma Ray Protection for Energies up to 10 MeV Structural Shielding Design and Evaluation, Pamphlet 49, 1976.

(3) The licensee shall obtain a Certificate of Occupancy from the local building official having jurisdiction.

(4) The licensee shall obtain a Certificate of Fire Clearance from the Fire Marshal having jurisdiction.

(5) The licensee must obtain clearance from the Department prior to utilization of newly constructed facilities and additions or remodels of existing facilities.

R432-4-9. New Construction, Additions and Remodeling.

(1) New construction, additions and remodels to existing structures, shall comply with Department rules in effect on the date the schematic drawings are submitted to the Department.

(2) If the remodeled area in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with adopted codes and rules governing new construction which are in effect on the date the schematic drawings are submitted to the Department.

(3) During remodeling and new construction, the licensee must maintain the safety level which existed prior to the start of work.

R432-4-10. Existing Building Licensure.

(1) Existing buildings, currently licensed, shall conform to Department construction rules in effect at the time of original facility licensure.

(2) Existing buildings which are currently licensed, or which were previously licensed, but are changing classification; or for which the licensed has lapsed, shall comply with requirements for new construction.

R432-4-11. Building Refurbishing.

(1) Paint, carpet, wall coverings, and other new materials installed as part of a refurbishing project shall comply with R432-4-8.

(2) The licensee shall maintain documentation of compliance with codes, rules, and standards.

R432-4-12. Mixed Occupancies.

(1) Health care occupancies must be separated from non-health care occupancies in accordance with requirements of the local jurisdiction.

(2) If separation of occupancies is not practical, the most restrictive occupancy requirements apply to the building.

R432-4-13. Campus and Contract Facilities.

All housing, treatment, and diagnostic areas and facilities utilized by a patient admitted to a licensed health care facility shall be constructed in accordance with the requirements of R432-4 if:

(1) the area will be used by one or more patients who are physically or mentally incapable of taking independent life saving action in an emergency;

(2) the prescribed or administered treatment renders the patient incapable of taking independent life saving action in an emergency; or

(3) the patient is incapable of taking independent life saving action in an emergency due to physical or chemical restraints.

R432-4-14. Plan Review.

(1) Prior to submitting documents for plans review, the facility licensee or designee shall schedule a conference with Department representatives, the licensee's architect, and the licensee or his designee to outline the required plans review process.

(2) The licensee shall submit the following for Department review:

(a) a functional program,

(b) schematic drawings,

(c) design development drawings,

(d) working drawings,

(e) specifications.

(3) The Department may initiate review when all required documents and fees are received.

(4) Working drawings and specifications for new construction, additions, or remodeling must have the seal of a Utah licensed architect affixed, in compliance with Section 58-3a-602.

(5) The licensee shall pay a plans review and construction inspection fee assessed by the Department in accordance with the fee schedule approved by the Legislature.

(6) Plans approval by the Department shall not relieve the licensee of responsibility for full compliance with R432-4.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or the latest plan review response letter, if construction has not commenced.

(8) After a 12 month lapse, the licensee must resubmit plans and a new plan review fee to the Department and obtain a new letter of approval before work proceeds.

(9) The Department may issue a license or modify a license only after the Department has determined the facility complies with adopted construction rules and has obtained all clearances and certifications.

R432-4-15. Functional Program.

The functional program required in R432-4-14(3)(a) must include the following:

(1) the purpose and proposed license category of the facility;

(2) services offered, including a detailed description of each service;

(3) ancillary services required to support each function or program;

(4) departmental relationships;

(5) services offered under contract by outside providers and the required in-house facilities to support these services;

(6) services shared with other licensure categories or functions;

(7) a description of anticipated in-patient workloads;

(8) a description of anticipated out-patient workloads;

(9) physical and mental condition of intended patients;

(10) patient age range;

(11) ambulatory condition of intended patients, such as non-ambulatory, mobile, or ambulatory;

(12) type and use of general or local anesthetics;

(13) use of physical or chemical restraints;

(14) special requirements which could affect the building;

(15) area requirements for each service offered, stated in net square feet;

(16) seclusion treatment rooms, if provided, including staff monitoring procedures;

(17) exhaust systems, medical gases, laboratory hoods, filters on air conditioning systems, and other special mechanical requirements;

(18) special electrical requirements;

(19) x-ray facilities, nurse call systems, communication systems, and other special systems;

(20) a list of specialized equipment which could require special dedicated services or special structures.

(21) a description of how essential core services will accommodate increased demand, if a building is designed for expansion;

(22) inpatient services, treatment areas, or diagnostic facilities planned or anticipated to be housed in other buildings, the construction type of the other buildings, and provisions for protecting the patient during transport between buildings.

(23) infection control risk assessment to determine the need for the number and types of isolation rooms over and above the minimum numbers required by the Guidelines.

R432-4-16. Drawings.

Drawings must show all equipment necessary for the operation of the facility.

(1) Schematic drawings may be single line and shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of departments to each other, to support facilities, and to common facilities;

(f) relationships of rooms and areas within departments;

(g) number of inpatient beds;

(h) total building area or area of additions or remodeled portions.

(2) Design development drawings, drawn to scale, shall contain the following information:

(a) room sizes;

(b) type of construction, using Uniform Building Code classifications;

(c) site plan, showing relationship to streets and vehicle access;

(d) outline specification;

(e) location of fire walls, corridor protection, fire hydrants, and other fire protection equipment;

(f) location and size of all public utilities;

(g) types of mechanical, electrical and auxiliary systems; and

(h) provisions for the installation of equipment which requires dedicated building services, special structure or which require a major function of space.

(3) Working drawings shall include all previous submitted drawings and specifications.

(a) The licensee shall provide one copy of completed working drawings and specifications to the Department.

(b) Within 30 days after receipt of the required documentation and plan review fee, the Department will provide to the licensee and the project architect a written report of modifications required to comply with construction standards.

(c) The licensee shall submit the revised plans for review and final Department approval.

R432-4-17. Construction Inspections.

(1) The Department may conduct interim inspections during construction.

(2) The licensee shall schedule with the Department a final construction inspection when the project is complete and all furnishings and equipment are in place, but prior to utilization.

R432-4-18. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and approve occupancy only after as-built drawings have been approved by the Department and the Department has conducted a construction inspection.

(2) The licensee must correct all noncompliant items and pay the full plans review fee and inspection fee in accordance with the established fee schedule prior to licensure and patient occupancy.

R432-4-19. Existing Buildings Without Plans.

(1) If plans are not available for existing buildings, or for facilities requesting an initial license or license category change, the licensee may submit to the Department the following information:

(a) a functional program described in R432-4-15;

(b) a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the material submitted and within 30 days after receipt of the required material, furnish to the licensee a letter of approval or rejection. The Department may provide, at its option, a report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department follow up inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee must pay an inspection fee in accordance with the fee schedule approved by the Legislature.

(5) The Department may issue a license when the building is in compliance with all licensing rules.

R432-4-20. Construction Phasing.

Projects involving remodeling or additions to existing buildings shall be scheduled and phased to minimize disruption

to the occupants of facilities and to protect the occupants against construction traffic, dust, and dirt from the construction site. Guidelines for Design and Construction of Hospital and Health Care Facilities 1996-97 edition Section 5 is adopted and incorporated by reference.

R432-4-21. Outpatient Unit Features.

(1) If a building entrance is used to reach outpatient services, the entrance must be at grade level, clearly marked, and located to minimize the need for outpatients to traverse other program areas. The outpatient surgery discharge location must provide protection from the weather by canopies that extend from the building to permit sheltered transfer to an automobile.

(2) Lobbies of multi-occupancy buildings may be shared if the design prohibits unrelated traffic within or through units or suites of the licensed health care facility.

R432-4-22. Standards for Accessibility.

(1) At least one drinking fountain, toilet, and handwashing facility shall be available on each floor for persons with disabilities.

(2) Each room required to be accessible to persons utilizing wheelchairs shall comply with ADAAG.

R432-4-23. General Construction.

(1) Guidelines for Design and Construction of Hospital and Health Care Facilities 1996-1997 edition, Section 7 and Appendix A (Guidelines), and Sections 9.1, 9.2, 9.3, 9.4, and 9.9 for free-standing satellites or in-house outpatient programs, are adopted and incorporated by reference except as modified in this section.

(2) If a modification is cited for the Guidelines, the modification supersedes conflicting requirements of the Guidelines.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(4) Waste Processing Systems. Facilities shall provide sanitary storage and treatment areas for the disposal of all categories of waste, including hazardous and infectious wastes using techniques acceptable to the Utah Department of Environmental Quality, and the local health department having jurisdiction.

(5) Windows, in rooms intended for 24-hour occupancy, shall be operable and open to the building exterior or to a court which is open to the sky.

(a) Windows shall be equipped with insect screens.

(b) Operation of windows shall be restricted to a maximum opening of six inches to prevent escape or suicide.

(c) Window opening shall be restricted regardless of the method of operation or the use of tools or keys.

(6) Trash chutes, laundry chutes, dumb waiters, elevator shafts, and other similar systems shall not pump contaminated air into clean areas.

(7) Public and patient toilet and bath areas must have grab bars installed in accordance with ADAAG.

(8) Each patient handwashing fixture shall have a mirror. Patient toilet and bath rooms that are required to be accessible to persons utilizing wheel chairs shall have mirrors installed in accordance with ADAAG.

(9) Showers and tubs shall contain recessed soap dishes.

(10) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(11) Floors and bases of kitchens, toilet rooms, bath rooms, janitor's closets, soiled workrooms, and other areas subject to frequent wet cleaning shall be homogenous and shall be coved.

(12) Ceilings in operating rooms, delivery rooms for caesarean sections, isolation rooms, and sterile processing rooms shall be smooth and crevice free.

(13) Acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in patient areas, nurse stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(14) Carpet.

Carpet in institutional occupancy patient areas, except public lobbies and offices, shall be treated to meet the following microbial resistance ratings as tested in accordance with test methods of the American Association of Textiles, Chemists, and Colorists (AATCC):

(a) Rating: minimum 90% bacterial reduction, test method: AATCC 100.

(b) Rating: maximum 20% fungal growth, test method: AATCC 174-91.

(c) Rating: Exhibits no zone of inhibition, test method: AATCC 174-91.

(d) Carpet and padding shall be stretched taut and be free of loose edges to prevent tripping.

(15) Signs shall be provided as follows:

(a) General and circulation direction signs in corridors;

(b) Identification on or by the side of each door; and

(c) Emergency evacuation directional signs.

(16) Elevators.

Elevators intended for patient transport shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

(17) All rooms and occupied areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and patient rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(a) Bottoms of ventilation openings shall be located at least three inches, above the floor.

(b) Supply and return systems shall be in ducts. Common returns using corridors or attic spaces as plenums are prohibited.

(18) In facilities other than general hospitals, specialty hospitals, and nursing care facilities, hot water recirculation is not required if the linear distance along the supply pipe from the water heater to the fixture does not exceed 50 feet.

(a) Rooms requiring medical gas, vacuum, and oxygen systems are listed in construction rules for each licensure category.

(b) If nonflammable medical gas and air system outlets are required, they shall be provided as outlined in Table 1.

TABLE 1

		Medical Gas Outlets		
Section	Location	Oxygen 1(one outlet accessible to each bed)	Vacuum 1(one outlet accessible to each bed)	Medical Air -
7.2.A	Patient Rooms Medical and Surgical			
7.2.B10	Examination/ Treatment Medical Surgical, and Postpartum Care)	1	1	-
7.2.C/ 7.2.D	Isolation (Infectious and Protective) (Medical and Surgical)	1	1	-
7.2.E	Security Room (Medical, Surgical And Postpartum)	1	1	-
7.3.A	Critical Care (General)	2	3	1
7.3.A14	Isolation (Critical)	2	3	1
7.3.B	Coronary Critical Care	2	2	1
7.3.D	Pediatric Critical Care	2	3	1
7.3.E	Newborn Intensive Care	3	3	3
7.4.B	Newborn Nursery (full term)	1	1	1
7.5.A	Pediatric and Adolescent	1	1	1
7.5.B	Pediatric Nursery	1	1	1
7.6.A	Psychiatric Patient Rooms	-	-	-
7.6.D	Seclusion Treatment Room	-	-	-
7.7.A1	General Operating Room	2	4	2
7.7.A2	Cardio, Ortho, Neurological	2	4	2
7.7.A3	Orthopedic Surgery	2	4	2
7.7.A4	Surgical Cysto and Endo	1	3	2
7.7.B2	Post-Anesthetic Care Unit	1	1	1
7.7.C9	Anesthesia Workroom	1 per workstation	-	1 per work-station
7.7.C14	Outpatient Recovery	1	1	1
7.8.A3	Caesarean/ Delivery Room	2	4	2
7.8.A3(d)	Labor Room	1	1	1
7.8.A3(e)	Recovery Room	1	1	1
7.8.A4	Labor/Delivery/ Recovery (LDR)	2	3	2
7.8.A4	Labor/Delivery/ Recovery/ Postpartum (LDRP)	2	3	2
7.9.C2	Initial Emergency Management per bed	1	1	1
7.9.D3	Triage Area (Definitive Emergency Care)	1	1	-
7.9.D7	Definitive Emergency Care Exam/Treatment Rooms	1	1	1
7.9.D7	Definitive Emergency Care Holding Area	1	1	-
7.9.D8	Trauma/Cardiac Room(s)	2	2	1
7.9.D9	Orthopedic and Cast Room	1	1	1
7.10.H	Cardiac Catheterization Lab	1	3	2
7.16.A2	Autopsy Room	-	1 per work station	1 per work station

(c) Bed pan washing devices may be deleted from inpatient toilet rooms where a soiled utility room is within the unit which includes bed pan washing capability.

(19) Building sewers shall discharge into a community sewer system. If a system is not available, the facility shall treat its sewage in accordance with local requirements and Utah Department of Environmental Quality requirements.

(20) Dishwashers, disposers and appliances shall be National Sanitation Foundation, NSF, approved and shall have the NSF seal affixed.

(21) Electrical materials shall be listed as complying with standards of Underwriters Laboratories, Inc. or other equivalent nationally recognized standards.

(a) Approaches to buildings and all spaces within the buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with at least mid range requirements shown in Tables 1A and 1B of the Guidelines in 29-95, Lighting for Health Facilities, by the Illuminating Engineering Society of North America.

(b) Parking lots shall have fixtures for lighting to provide light levels as recommended in IESNA Lighting for Parking Facilities (RP-20-85).

(c) Cover plates on electrical receptacles connected to the emergency system shall be red.

(d) The activating device for nurse call stations shall be of a contrasting color to the adjacent floor and wall surfaces to make it easily visible in an emergency.

(e) Fuel storage capacity of the emergency generator shall permit continuous operation of the facility for 48 hours.

(f) Building electrical services connected to the emergency electrical source must comply with the specific rules for each licensure category.

R432-4-24. General Construction, Patient Service Facilities.

Guidelines for Design and Construction of Hospital and Health Care Facilities 1996-1997 edition, Section 7 and Appendix A (Guidelines), are incorporated and adopted by reference and shall be met except as modified in this section. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(1) Hospitals must at least one nursing unit of at least six beds containing patient rooms, patient care spaces, and service areas.

(a) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the service areas shall be contiguous to each nursing unit served.

(b) Identifiable spaces shall be provided for each of the required services.

(i) When used in this rule, "room or office" describes a specific, separate, enclosed space for the service.

(ii) When "room or office" is not used, multiple services may be accommodated in one enclosed space.

(c) Facility services shall be accessible from common areas without compromising patient privacy.

(2) Patient room area is identified in each individual construction rule for the licensure category rule.

(a) The closets in each patient room shall be a minimum

of 22 inches deep by at least 22 inches wide and high enough to hang full length garments and to accommodate two storage shelves.

(b) In new construction, all patient rooms shall have a hand washing fixture within the room.

(c) The hand washing fixture may be omitted from the toilet room if each patient room served by that toilet room contains a hand washing fixture.

(3) The facility must provide linen services as follows:

(a) Processing laundry may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(b) If laundry is processed by an outside commercial laundry, the following shall be provided:

(i) a separate room for receiving and holding soiled linen until ready for transport;

(ii) a central, clean linen storage and issuing room(s) to accommodate linen storage for four days operation or two normal deliveries, whichever is greater; and

(iii) handwashing facilities in each area where unbagged, soiled linen is handled.

(c) If the facility processes it's own laundry, within the facility or in a separate building, the following shall be provided:

(i) a receiving, holding, and sorting room for control and distribution of soiled linen;

(ii) a washing room with handwashing facilities and commercial equipment that can process a seven day accumulation of laundry within a regularly scheduled work week;

(iii) a drying room with dryers adequate for the quantity and type of laundry being processed; and

(iv) a clean linen storage room with space and shelving adequate to store one half of all linens and personal clothing being processed.

(d) Soiled linen chutes shall discharge directly into the receiving room or in a room separated from the washing room, drying room and clean linen storage.

(e) Prewash facilities may be provided in the receiving, holding and sorting rooms.

(f) If laundry is processed by the facility, either a two or three room configuration may be used as follows;

(i) A two room configuration shall consist of the following:

(A) a room housing soiled linen receiving, sorting, holding, and prewash facilities; washers; and handwashing facilities; and

(B) a room housing dryers; clean linen folding, sorting, and storage facilities; and handwashing facilities.

(ii) A three room configuration shall consist of:

(A) a soiled linen receiving, sorting, holding room with prewash and handwashing facilities;

(B) a combination washer and dryer room arranged so linen flows from the soiled receiving area to the washers, to the dryers, and then to clean storage; and

(C) a clean storage room with folding, sorting, storage and handwashing facilities.

(iii) Physical separation shall be maintained between rooms by means of self closing doors.

(iv) Air movements shall be from the clean area to the soiled area. Air from the soiled area shall be exhausted directly to the outside.

(g) Handwashing sinks shall be provided and located within the laundry areas to maintain the functional separation of the clean and soiled processes.

(h) Rooms shall be arranged to prevent the transport of soiled laundry through clean areas and the transport of clean laundry through soiled areas.

(i) Convenient access to employee lockers and lounges shall be provided.

(j) Storage for laundry supplies shall be provided.

(k) A cart storage area for separate parking of clean and soiled linen carts shall be provided out of normal traffic paths.

R432-4-25. Excluded Sections of the Guidelines.

The Linen Services section 7.23 of the Guidelines does not apply.

R432-4-26. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
December 1, 1999 26-21-5
Notice of Continuation January 29, 1999 26-21-16

R432. Health, Health Systems Improvement, Licensing.
R432-5. Nursing Facility Construction.
R432-5-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-5-2. Purpose.

The purpose of this rule is to promote the health and welfare through the establishment and enforcement of construction standards.

R432-5-3. Definitions.

(1) "Special Care Unit" means a physical area within a licensed facility designated for the housing and treatment of residents diagnosed with a specifically defined disease or medical condition.

(2) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-5-4. Description of Service.

(1) A nursing unit shall consist of resident rooms, resident care spaces, and services spaces.

(2) Each nursing unit shall contain at least four resident beds.

(3) Rooms and spaces composing a nursing unit shall be contiguous.

(4) A nursing care facility operated in conjunction with a general hospital or other licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more facilities.

(5) Special care units shall comply with all provisions of R432-5.

R432-5-5. General Design Requirements.

R432-4-1 through R432-4-23, and 24(3) apply with the following modifications.

(1) Fixtures in all public and resident toilet and bathrooms shall comply with Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993). These rooms shall be wheelchair accessible with wheelchair turning space within the room.

(2) Lavatories, counters, and door clearances within resident rooms shall be wheelchair accessible.

R432-5-6. General Construction Requirements.

(1) Nursing facilities shall be constructed in accordance with the Guidelines for Design and Construction of Hospital and Health Care Facilities (Guidelines), Section 8 and Appendix A, 1996-1997 edition which is adopted by reference.

(2) Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

R432-5-7. Nursing Unit.

(1) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each nursing unit served.

(2) Facility service areas shall be accessible from common areas without compromising resident privacy.

(3) Each nursing unit shall have a maximum number of 60 beds.

(4) At least two single-bed rooms, each with private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each nursing unit.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or handwashing sink shall be provided in the resident room.

(b) Ventilation shall be in accordance with Table 6 with all air exhausted to the outside.

(5) Each room shall have a window in accordance with R432-4-23(5).

(6) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned to accommodate full length garments.

(7) A nurse call system is not required in facilities which care for persons with mental retardation or developmental disabilities. With prior approval of the Department, a nursing facility may modify the system to alleviate hazards to residents.

(8) Handwashing facilities shall be located near the nursing station and the drug distribution station.

(9) A staff toilet room may also serve as a public toilet room if it is located in the nursing unit.

(10) A clean workroom or clean holding room with a minimum area of 80 square feet shall provide for preparing resident care items.

(a) The clean work room shall contain a counter, handwashing facilities and storage facilities.

(b) The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(11) If a medical cart is used it shall be under visual control of staff.

(a) Double locked storage shall be provided for controlled drugs.

(b) Provisions shall be made for receiving, assembling, and storage of drugs and other pharmacy products.

(12) If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited.

(13) Ice intended for human consumption shall be dispensed by self dispensing ice makers. Bin type storage units are prohibited.

(14) Gurney showers for residents may be provided at the option of the facility.

(a) One bathtub and shower shall be provided on each nursing floor in addition to bath fixtures in resident toilet rooms.

(b) At least one shower on each floor shall be at least four feet square without curbs designed for use by a resident using a wheelchair.

(c) Each resident bathtub and shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(15) At least one toilet room shall be provided on each floor containing a nursing unit to be used for resident toilet training.

(a) The room shall contain a toilet and lavatory with wheelchair turning space within the room.

(b) A toilet room with direct access from the bathing area shall be provided at each central bathing area if a toilet is not otherwise provided in the bathing area. The toilet training facility may serve this function if there is direct access from the bathing area.

(c) Doors to toilet rooms shall have a minimum width of 34 inches to admit a wheelchair. The doors shall permit access from the outside in case of an emergency.

(d) A handwashing fixture shall be provided in each toilet room.

(16) An equipment storage room with a minimum area of 120 square feet for portable equipment shall be provided.

R432-5-8. Resident Support Areas.

(1) Occupational therapy service areas may be counted in the calculation of support space.

(2) Physical Therapy, personal care room, and public waiting lobbies shall not be included in the calculation of support space.

(3) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents.

(4) There shall be a general purpose room with a minimum area of 100 square feet equipped with a table and comfortable chairs.

(5) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

(6) Examination and Treatment rooms.

(a) An examination and treatment room shall be provided except when all resident rooms are single bed rooms.

(b) An examination and treatment room may be shared by multiple nursing units.

(c) When provided, the room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or moveable.

(d) The room shall contain a lavatory equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(7) In addition to facility general storage areas, at least five square feet per bed shall be provided for resident storage.

R432-5-9. Rehabilitation Therapy.

(1) A separate storage room for clean and soiled linen shall be provided contiguous to the rehabilitation therapy area.

(2) Storage for rehabilitation therapy supplies and equipment shall be provided.

R432-5-10. General Services.

(1) Linen services shall comply with R432-4-24(3).

(2) There shall be one housekeeping room for each nursing unit.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-5-11. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques defined by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-5-12. Details and Finishes.

(1) Grab bars shall be installed in all toilet rooms in accordance with the ADAAG.

(2) Corridor and hallway handrails shall comply with ADAAG. The top of the rail shall be 34 inches above the floor, except for areas serving children and other special care areas.

(3) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(4) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADAAG.

(5) Partitions, floor and ceiling construction in resident areas shall comply with the noise reduction criteria of Table 1 for sound control.

TABLE 1

Sound Transmission Limitations
in Long-Term Care Facilities

Airborne Sound Transmissions
Transmissions Class (STC) (a)

Class (IIC) (b)	Partitions	Floors
(Residents') room to resident's room	35	40
Public space to (residents) room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient's rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-5-13. Elevators.

At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-5-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Air Conditioning, Heating, and Ventilating Systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(c) Evaporative coolers may only be used in kitchen hood systems that provide 100% outside air.

(d) Isolation rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. No air shall be recirculated into the building system.

(e) Supply and return systems must be within a duct. Common returns using corridor or attic spaces as return plenums are prohibited.

(f) Filtration shall be provided when mechanically circulated outside air is used.

(g) Hoods.

(i) All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat activated fan controls.

(ii) Cleanout openings shall be provided every 20 feet in horizontal sections of duct systems serving the hoods.

(h) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other nonresident areas.

(4) Plumbing and other Piping Systems shall include:

(a) Handwashing facilities that are arranged to provide sufficient clearance for single lever operating handles.

(b) Dishwashers, disposal and appliances that are National Sanitation Foundation (NSF) approved and have the NSF seal affixed.

(c) Kitchen grease traps that are located and arranged to permit access without the need to enter food preparation or storage areas.

(d) Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities that is regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances.

R432-5-15. Electric Standards.

(1) Operators shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Lighting Handbook 1987, Volume 2, Applications by Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) Each examination and work table shall have access to a minimum of two duplex outlets.

(5) Receptacle cover plates on the emergency system shall be red.

(6) An on-site emergency generator shall be provided in all nursing care facilities except small ICF/MR health care facilities of 16 beds or less.

(a) In addition to requirements of NFPA 70, Section 517-40, the following equipment shall be connected to the critical branch of the essential electrical system.

(i) heating equipment necessary to provide heated space sufficient to house all residents under emergency conditions,

(ii) duplex convenience outlets in the emergency heated area at the ratio of one duplex outlet for each ten residents,

(iii) nurse call system,

(iv) one duplex receptacle in each resident bedroom.

(b) Fuel storage shall permit continuous operation of the services required to be connected to the emergency generator for 48 hours.

R432-5-16. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

(1) Parking, Section 8.1.F.

(2) Program of Functions, Section 8.1.G.

(3) Clean Utility Room, Subsection 8.2.C.5.

(4) Windows, Subsection 8.2.B3. and 8.8.A4.

(5) Linen Services, section 8.11.

R432-5-17. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

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R432. Health, Health Systems Improvement, Licensing.
R432-6. Assisted Living Facility General Construction.
R432-6-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21. Sections numbered less than R432-6-99 apply to all assisted living facilities. Sections in the R432-6-100 series apply to Type I assisted living facilities. Sections in the R432-6-200 series apply to Type II assisted living facilities.

R432-6-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving assisted living services through the establishment and enforcement of construction standards.

R432-6-3. Definitions.

(1) Assisted Living Facility Type I is a residential facility that provides assistance with activities of daily living and social care to two or more ambulatory residents who require protected living arrangements.

(2) Assisted Living Facility Type II is a residential facility that provides coordinated supportive personal and health care services to two or more semi-independent residents.

(a) "Semi-independent means a person who is:

(i) physically disabled but able to direct his or her own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility, or to a zone or area of safety, with the physical assistance of one person.

(b) "Resident Living Unit" means:

(i) a one bedroom unit which may also include a bathroom and additional living space; or

(ii) a two bedroom unit which may also include a bathroom and additional living space.

(c) "Additional Living Space" means a living room, dining area and kitchen, or a combination of these rooms or areas in a resident living unit.

(3) "Room" or "office" means a specific, separate, fully enclosed space for the service. If "room" or "office" is not used, multiple services may be accommodated in one enclosed space.

(4) Assisted Living Facilities Type I and Type II may be classified as either large, small or limited capacity.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses up to five residents.

R432-6-4. General Requirements.

(1) The licensee is responsible for assuring compliance with R432-6.

(2) If testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) If conflicts exist between applicable codes or if other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the most restrictive requirement applies.

(4) If the Department has concerns about compliance, the licensee is responsible to demonstrate compliance.

R432-6-5. Codes and Code Compliance.

(1) The following codes and standards enforced by other agencies or jurisdictions apply to assisted living facilities. The licensee shall obtain documentation of compliance for the following codes and standards from the authority having jurisdiction and submit the documentation to the Department:

(a) Local zoning ordinances;

(b) Uniform Building Code;

(c) Uniform Plumbing Code;

(d) Uniform Fire Code;

(e) ASME Elevator and Escalator A17.1; and

(f) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A (July 1993).

(2) The licensee shall obtain a certificate of occupancy from the local building official having jurisdiction.

(3) The licensee shall obtain a certificate of fire clearance from the Fire Marshal having jurisdiction.

(4) The licensee shall submit a copy of the certificates to the Department prior to resident utilization of newly constructed facilities, additions or remodels of existing facilities.

R432-6-6. Application of Codes for New and Existing Buildings.

(1) New construction, additions and remodels to existing buildings shall comply with Department rules in effect on the date the first drawings are received by the Department.

(2) If the remodeled area in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with rules governing new construction which are in effect on the date the first drawings are submitted to the Department.

(3) During remodeling, new construction or additions, the safety level which existed prior to the start of work shall be maintained.

(4) Current licensed buildings shall conform to Department construction rules in effect at the time of initial facility licensure.

(5) Buildings which are changing license classification shall comply with requirements for new construction.

(6) Buildings undergoing refurbishing shall comply with the following:

(a) All materials installed as part of a refurbishing project shall comply with flame spread ratings required by the fire marshal having jurisdiction.

(b) The facility shall keep written documentation of compliance with codes and standards.

R432-6-7. Plans Review and Approval and Construction Inspection.

(1) Health facilities shall obtain Department approval before occupying any newly constructed buildings or remodeled systems, or areas in existing buildings.

(2) Prior to submitting documents for plans review, the facility architect and licensee must schedule a conference with Department representatives to outline the required plans review

process.

(3) The licensee shall submit the following for Department review:

(a) a functional program;

(b) schematic drawings;

(c) design development drawings; and

(d) working drawings, including specifications.

(4) The Department shall initiate its review when it receives all required documents and fees.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a Utah licensed architect affixed in compliance with Section 58-3a-602.

(6) Plans approved by the Department do not relieve the licensee of responsibility for full compliance with R432-6.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or latest plan review response letter if construction has not commenced. After a 12 month lapse the licensee must resubmit plans to the Department with a new plan review paid. A new letter of approval must be obtained from the Department.

(8) The Department shall issue an initial license, renewal license, or modified license only after the Department has determined the facility conforms with applicable licensure construction rules and has obtained all required clearances and certifications.

R432-6-8. Functional Program.

(1) The licensee must furnish to the Department a functional program which includes the following:

(a) the purpose and license category of the facility;

(b) services offered, including a detailed description of each service;

(c) ancillary services required to support each function or program;

(d) services offered under contract by outside providers and the required in-house facilities to support these services;

(e) services shared with other health care licensure categories or functions;

(f) physical and mental condition of intended residents;

(g) ambulatory condition of intended residents, such as mobile or ambulatory;

(h) special electrical requirements related to resident care; and

(i) communication systems and other special systems.

(2) The functional program must include a description of how essential core services will accommodate increased demand if the building is designed for later expansion.

R432-6-9. Drawings.

(1) Drawings shall show all equipment necessary for the operation of the facility, such as kitchen equipment, laundry equipment, and similar equipment.

(2) Schematic drawings, which may be single line, shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage and any natural drainage channels which traverse the site;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of rooms and areas within departments;

(f) number of resident beds; and

(g) total building area or area of additions or remodeled portions.

(3) Design development drawings, drawn to scale, shall contain the following information:

(a) room dimensions and room square footage;

(b) site plan, showing relationship to streets and vehicle access;

(c) location and size of public utilities; and

(d) types of mechanical, electrical and auxiliary systems.

(4) Working drawings shall include all the drawings outlined above in R432-6-9(1) through (3).

(a) The licensee shall provide one copy of completed working drawings and specifications which shows all equipment necessary for the operation of the facility such as kitchen, laundry, and other equipment.

(b) The Bureau of Licensing will keep the final drawings for 12 months after final approval of the project. Drawings may then be returned to the owner upon request.

(5) Within 30 days after receipt of required documentation and fee, the Department shall provide to the licensee and the project architect a written report of plans review outlining necessary modifications required to comply with Department rules.

(6) If changes are necessary, the licensee shall submit revised plans for review and final approval.

R432-6-10. Construction Inspections.

(1) The Department may conduct interim inspections.

(2) Prior to resident utilization, the licensee shall schedule a final inspection with the Department when the project is complete and furnishings and equipment are in place.

R432-6-11. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and authorize resident utilization only after it has approved as-built drawings and has conducted a construction inspection.

(2) The licensee shall correct all non-compliant items and pay the full plans review fee and inspection fee.

R432-6-12. Buildings Without Plans.

(1) If plans are not available for existing buildings involved in initial licensing or license category change, the licensee shall submit to the Department a functional program as defined in subsection R432-6-8, and a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the functional program and furnish to the licensee a letter of approval or rejection within 30 days after receipt of the material. The Department may provide, at its option, a written report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department

inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay the inspection fee.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-6-13. Construction Phasing.

Projects involving remodeling or additions to an occupied building shall be programmed and phased to minimize detrimental effects to and disruption of residents and employees of the facility by protecting against construction traffic, dust, and dirt from the construction site.

R432-6-14. Site Location.

(1) The site shall be accessible to both visitor and service vehicles.

(2) Facilities shall be located to ensure that public utilities are available.

R432-6-15. Site Design.

The site design shall include the following:

(1) Surrounding land for outdoor activities;

(2) Paved roads for access to service docks and entrances;

(3) Fire equipment access as required by the fire marshal; and

(4) Paved walkways for pedestrian traffic and from every required exit to a dedicated public way.

R432-6-16. Parking.

(1) Parking requirements must comply with local zoning ordinances.

(2) Parking spaces for persons with disabilities shall be as level as practical and conform to requirements for disabled parking access as required by ADAAG.

(a) The extra width required for disabled parking may be used as part of a common walkway.

(b) Parking spaces for the disabled shall be directly accessible to the facility without requiring the disabled to go behind parked cars.

R432-6-17. Elevators.

All large multi-level assisted living facilities shall have an elevator which serves all levels. At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-6-18. Special Design Features.

(1) Building entrances in large facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(2) Lobbies of multi-occupancy buildings may be shared if the design precludes unrelated traffic within or through units or suites of the licensed health care facility.

(3) At least one building entrance shall be accessible to persons with physical disabilities. Entrances requiring ramps with a slope in excess of 1:20 shall have steps as well as ramps.

(4) In Large facilities where all resident units do not have kitchens or toilet facilities, at least one drinking fountain or water cooler, toilet, and handwashing fixture on each floor shall be wheelchair accessible.

(5) Each resident living unit shall have a wardrobe, closet, or locker for each resident occupying the unit. The closet, wardrobe or locker shall have a shelf and a hanging rod, with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall, suitable for hanging full-length garments.

R432-6-19. General Standards for Details.

(1) Placement of drinking fountains, telephone booths, or vending machines shall not restrict corridor traffic or reduce required corridor width.

(2) Doors and windows shall comply with the following requirements:

(a) Rooms which contain bathtubs, showers, or water closets for resident use shall be equipped with doors and hardware which permit emergency access.

(b) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner which will obstruct traffic or reduce corridor width. Large walk-in type closets are occupiable spaces.

(c) Windows which open to the exterior shall be equipped with insect screens.

(d) Resident rooms and suites intended for 24-hour occupancy shall have operable windows which open to the exterior of the building or to a court open to the sky.

(e) Doors, sidelights, borrowed lights, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic break-resistant material that creates no dangerous cutting edges when broken.

(f) Safety glass, wired glass, or plastic break-resistant materials shall be used for wall openings in recreation rooms, exercise rooms, and other activity areas unless prohibited in the Uniform Building Code.

(g) Doors used for shower and bath enclosures shall be made of safety glass or plastic glazing materials.

(3) Trash chutes, laundry chutes, dumbwaiters, elevator shafts, and other similar systems shall not allow movement of contaminated air into clean areas.

(4) Thresholds and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

(5) All lavatories must be equipped with hand drying facilities.

(a) Lavatories that are expected to serve more than one resident shall have single use paper towel dispensing units or cloth towel dispensing units that are enclosed to protect towels from being soiled. Double occupancy units are not required to provide towel dispensing units if occupied by two related persons.

(b) Lavatories shall be anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

R432-6-20. General Standards for Finishes.

(1) Curtains and draperies shall be affixed to permanently mounted tracks or rods.

(2) Floors and walls shall be designed and constructed as follows:

(a) Floor materials shall be easily cleanable;

(b) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(c) In areas subject to frequent wet-cleaning, floor materials shall not be physically affected by germicidal cleaning solutions.

(d) Floors in shower and bath areas, kitchens, and similar work areas subject to traffic while wet shall have non slip surfaces.

(e) Floors and wall bases of kitchens, toilet rooms, bath rooms, janitors' closets, and other areas subject to frequent wet cleaning shall be homogeneous with coved bases and tightly sealed seams.

(f) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(g) Finish, trim, floor, and wall construction in dietary and food preparation areas shall be free of insect and rodent harboring spaces.

(h) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to resist passage of fire and smoke and minimize entry of pests.

(i) Carpet and padding shall be stretched taut and be free of loose edges.

(j) Carpet pile shall be sufficiently dense so as not to interfere with the operation of wheel chairs, walkers, wheeled carts, and other wheeled equipment.

(k) Carpet and other floor coverings shall comply with provisions of ADAAG.

(3) Ceiling finishes shall be designed and constructed as follows:

(a) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be readily cleanable with routine housekeeping equipment.

(b) In large facilities, acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in resident areas, dayrooms, recreation rooms, dining areas, and waiting areas.

(c) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire resistive purposes.

(4) The following signs shall be provided:

(a) general and circulation direction signs in corridors of large assisted living facilities;

(b) emergency evacuation directional signs for all facilities; and

(c) room identification signs on the corridor side of all corridor doors.

R432-6-21. Building Systems.

(1) Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the State Department of Environmental Quality, and the local health department having jurisdiction.

(2) The following engineering service and equipment shall be provided for effective service and maintenance functions:

(a) rooms for mechanical equipment or electrical equipment;

(b) a storage room for building maintenance supplies;

(c) yard equipment and supply storage areas located so that equipment may be moved directly to the exterior of the building without passing through building rooms or corridors;

(d) central storage for supplies, equipment and miscellaneous storage in large and small facilities; and

(e) in large facilities, a separate maintenance room or office.

(3) In large facilities a housekeeping room shall be located on each floor of the assisted living facility. This room shall have a floor receptor or service sink. All housekeeping rooms shall be mechanically exhausted.

(4) Sound Control for large assisted living facilities must be designed and constructed to meet the noise reduction criteria as outlined in Table 1.

TABLE 1
Sound Transmission Limitations

	Airborne Sound Transmissions Class	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room	40	40
Service areas to residents' room	45	45

(a) Sound transmission class shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boilers and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above resident's rooms, offices, and similarly occupied space shall be effectively isolated from the floor.

(d) Recreation rooms, exercise rooms, equipment rooms and similar spaces where impact noises may be generated may not be located directly over residents' rooms.

R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided for interior spaces independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be insulated and ventilated to prevent the floor surface above or the

walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located to prevent fumes from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes from entering the building.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters in accordance with Table 3.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional
Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater	2	Optional of one air change or minimum 20 CFM/ person
Soiled Linen Sorting and Storage	N	Optional	10	YES
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

(4) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(5) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

R432-6-23. Plumbing.

(1) Showers and tubs shall have non-slip or slip-resistant surfaces.

(2) Potable water supply systems shall comply with the following requirements:

(a) Water supply systems shall be designed with sufficient pressure to operate all fixtures and equipment during maximum demand.

(b) Each water service main, branch main, riser, and branch to a group of fixtures shall have a stop valve. A stop valve shall be provided for each fixture. Panels shall be provided for access to valves.

(c) All fixtures used by residents shall be trimmed with valves with cross, tee or single lever handles.

(3) Hot water systems shall meet the following requirements:

(a) As a minimum, water-heating systems shall provide supply capacity at temperatures and amounts indicated in Table 3. Water temperature shall be measured at the point of use or inlet to equipment.

TABLE 3
Hot Water Use

	Resident Care Areas	Dietary	Laundry
Gallons per Hour per Bed	3	2	2
Temperature Centigrade	43	49	71
Temperature Fahrenheit	110	120	160

(b) Distribution systems that exceed 50 linear feet and that service resident care areas shall be under constant recirculation to provide continuous hot water to each outlet. The temperature of hot water for lavatories, showers and bathing shall not exceed 120 degrees Fahrenheit. Thermostatically controlled automatic mixing valves may be used to maintain hot water at these temperatures.

(c) 180 degrees Fahrenheit rinse water must be provided at the dishwasher if an approved low temperature chemical rinse is not utilized.

(d) 160 degrees Fahrenheit hot water must be available at the laundry equipment as needed.

(4) Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed.

(5) Drainage system shall comply with the following requirements:

(a) Building sewers shall discharge into community sewerage. Where such a system is not available, the facility shall treat its sewage in accordance with local requirements and State Department of Environmental Quality requirements.

(b) Where overhead drain piping is exposed, special provisions shall be made to protect the space below from contamination from leakage, condensation, and dust particles. Approval of special provisions in food preparation, food service areas, and food storage areas shall be obtained from the local health department.

(c) Kitchen grease trap locations shall comply with local health department rules.

(6) Dishwashers, in sink garbage disposers, and other appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed.

R432-6-24. Electrical.

(1) In large assisted living facilities, panel boards serving normal lighting and appliance circuits shall be located on the same floor or on the same wing as the circuits served. Panels for emergency circuits, if provided, may serve the floors above and below for general resident areas and administration.

(2) Corridors shall be illuminated at night in accordance with Table 4.

(3) Light intensity shall be at or above the minimum foot-candle in accordance with Table 4. Areas not shown in Table 4, including parking lots and approaches to the building, shall have fixtures to provide light levels as recommended in IES Lighting Handbook, RP-29-95, Lighting for Hospitals and Health Care Facilities by the Engineering Society of North America which is adopted and incorporated by reference.

TABLE 4
Assisted Living Facilities Lighting Standards

Physical Plant Area	Minimum Foot-candle
Corridors	
Day	15
Night	7.5
Exits	15
Stairways	15
Res. Room	
General	7.5
Reading/Mattress Level	30
Toilet area	30
Lounge	
General	7.5
Reading	30
Recreation	30
Dining	20
Dining and Recreation	30
Laundry	30

(4) Each resident room shall have a duplex grounded receptacle on every wall.

(5) Duplex grounded receptacles for general use shall be installed no more than 50 feet apart in corridors, on either side, and within 25 feet of corridor ends.

(6) A night light shall be provided in each resident bedroom and bathroom.

R432-6-25. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) storage area for food supplies, including a cold storage area, for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) food preparation area;

(c) an area to serve and distribute resident meals;

(d) an area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) a storage area for waste which is located next to an outside facility exit for direct pickup; and

(f) a space for meal planning.

R432-6-100. Type I Facilities.

The following sections in the 100 series apply to Type I assisted living facilities.

R432-6-101. Occupancy Type.

(1) Large assisted living facilities shall comply with I-2, Uniform Building Code, requirements.

(2) Small assisted living facilities shall comply with R-4, Uniform Building Code, requirements.

(3) Limited capacity assisted living facilities shall comply with R-3, Uniform Building Code, requirements.

R432-6-102. Common Areas.

(1) A common room or rooms shall be provided for dining, sitting, visiting, recreation, worship, and other activities.

(a) Common rooms shall have sufficient space and separation to promote and facilitate the activity without interfering with concurrent activities or functions in the building.

(i) In a small facility the common rooms shall be at least 28 square feet per bed, but no less than a total of 225 square feet.

(ii) In a large facility the common rooms shall be at least 30 square feet per bed. In a facility with 100 beds or more, the common rooms minimum square footage per bed may be reduced to 25.

(b) Space shall be provided for necessary equipment and storage of recreational equipment and supplies.

R432-6-103. Resident Units.

(1) Minimum room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, and vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms.

(a) The areas noted above are minimums and do not prohibit larger rooms.

(b) Resident units may not have more than two beds per unit

(2) No room used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a residents' sleeping room.

(3) No bedroom may be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(4) Bedrooms shall open directly into a corridor or common living area, but shall not open into a food preparation area.

(5) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-104. Toilet and Bathing Facilities.

(1) Residents shall have privacy in toilet and bathrooms. Toilet and bathrooms shall be conveniently located.

(2) Resident toilet, bathtub, shower rooms, and facilities designed for use by the disabled shall comply with ADAAG.

(3) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility.

(4) Bars, including those which are an integral part of soap dishes, towel bars, and other fixtures shall be anchored to sustain a concentrated load of 250 pounds.

(5) There shall be one toilet and lavatory on each floor for each six occupants not otherwise served by toilet and lavatory in the resident rooms. A large type I assisted living facility shall have separate and additional toilet and bathing facilities for live-in family and staff.

(6) There shall be at least one bathtub or shower for each 10 residents not otherwise served by bathing facilities in resident rooms. Separate and additional facilities shall be provided for live-in family and staff. In a multistory building, there shall be at least one bathtub or shower which opens from the corridor on each floor that contains resident bedrooms not otherwise served.

(7) Each central bathroom shall have a toilet and lavatory.

(8) Toilet and bathing facilities shall not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that can be easily cleaned and sanitized.

(10) Showers and bathrooms shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror, except in food preparation areas.

R432-6-105. Service Areas.

There shall be adequate space and equipment for the following service or functions.

(1) Large assisted living facilities must provide the following:

(a) an administrator's office with equipment for keeping records and supplies;

(b) an employee toilet room, lockers, and lounges, in addition to and separate from those required for the public;

(c) a public reception or information area; and

(d) housekeeping closets each with a floor receptor or service sink.

(2) The following required spaces apply to all type I assisted living facilities:

(a) A secure area for administrative activities and storage for resident records;

(b) a medication-storage area including a locked drug cabinet;

(c) a closet or compartment for the staff's personal effects;

(d) a clean linen storage area;

(e) a telephone for private use by residents or visitors;

(f) at least one general use housekeeping closet accessible from a general corridor on each wing or each floor; and

(g) storage space for housekeeping equipment and supplies with a mechanical exhaust system.

R432-6-106. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a separate building, on or off site, or in a commercial or shared laundry.

(2) At least one washing machine, one clothes dryer, and ironing equipment in good working order shall be available for use by residents who wish to do their personal laundry.

R432-6-107. Signal System.

(1) A signal system is required for the following facilities:

(a) a large facility;

(b) a facility with bedrooms on more than one floor; and

(c) when staff are not continuously present on the same level as any resident.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit, and from each bathroom or toilet room;

(b) transmit a visual or auditory signal or both to a centrally staffed location, or produce an auditory signal at the living unit loud enough to summon staff; and

(c) identify the location of the resident summoning help.

R432-6-200. Type II Facilities.

The following sections in the 200 series apply to Type II assisted living facilities.

R432-6-201. Occupancy Type.

(1) Large and small assisted living facilities shall comply with I-2, Uniform Building Code, requirements and shall have, at a minimum, six-foot wide corridors.

(2) Limited capacity assisted living facilities that house Type II assisted living residents shall comply with R-4, Uniform Building Code requirements and shall either have an approved sprinkler system, or provide a staff to resident ratio of one to one on a 24-hour basis. Residents shall be housed on floors at

grade level.

(3) Multiple level assisted living facilities shall provide smoke compartmentation on all levels above the first floor. Each compartment shall have space to accommodate all occupants of that floor.

R432-6-202. Campus-Type Facilities.

(1) If a campus-type facility has separate buildings, all of the buildings shall be located on the same site within 150 feet of each other.

(2) Resident living units shall be connected to bathing facilities and common areas by enclosed temperature controlled corridors.

(3) Recreation and dining spaces that are also utilized by residents of other licensed health care facilities within the same campus may be counted in determining common area space as long as all applicable code and space requirements are met for all licensed facilities and the shared space is accessible without the need to pass through corridors or resident care areas of another licensed facility. The shared space may not account for more than fifty percent of the total common square footage required for any one licensed facility.

R432-6-203. Resident Units.

(1) Facility services shall be accessible from common areas without compromising resident privacy.

(2) Resident living units shall include room areas exclusive of space for toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules as follows:

(a) A single occupant unit without additional living space shall be a minimum of 120 square feet.

(b) A double occupant unit without additional living space shall be a minimum of 200 square feet.

(c) A single occupant bedroom in a unit with additional living space shall be a minimum of 100 square feet.

(d) A double occupant bedroom in a unit with additional living space shall be a minimum of 160 square feet.

(3) No space used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a resident's bedroom.

(4) Bedrooms may not be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(5) Each resident living unit shall open directly into a corridor or common living area, but must not open into a food preparation area.

(6) A maximum of two residents may occupy a resident living unit.

R432-6-204. Toilet and Bathing Facilities.

(1) If toilet and bathrooms are shared by more than one resident, the facility shall provide individual privacy.

(2) A minimum of fifty percent of all toilet rooms, bathrooms and shower rooms shall be designed in compliance with ADAAG.

(3) Public toilet rooms shall be accessible from a corridor, and shall comply with ADAAG.

(4) If the living unit includes a private bathroom, the bathroom shall contain a toilet and a lavatory.

(5) If resident living units do not have a private bathroom, the facility shall provide the following:

(a) a toilet and lavatory for every four residents;

(b) a bathtub or shower for every 10 residents designed to accommodate a resident in a wheelchair and space to allow staff to assist a resident in taking a shower; and

(c) a bathroom with bathtub or shower, toilet and lavatory which open from a corridor on each floor of a multiple story facility.

(6) If resident living units have private bathrooms that do not allow staff assistance, then each floor or level shall provide a bathroom equipped with a bathtub or shower, toilet, and lavatory which opens from a corridor that provides wheelchair clearances and allows for staff assistance in bathing.

(7) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility not designed for accessibility.

(8) Toilet and bathing facilities may not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that may be easily cleaned and sanitized.

(10) Showers and tubs shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror. Mirrors over lavatories located in food preparation areas are prohibited.

(12) All lavatories shall have hand drying facilities.

(a) If lavatories are used by more than one individual, enclosed, single use paper towel dispensing units or cloth towel dispensing units or hot air drying units shall be provided.

(b) Lavatories shall be anchored to withstand an applied vertical load of 250 pounds on the front of the fixture.

(13) Bars, including those which are parts of soap dishes, towel bars, and other fixtures shall be anchored to a wall and withstand a concentrated load of 250 pounds.

R432-6-205. Common Areas.

(1) The facility shall provide a common room or rooms for dining, sitting, visiting, recreation, worship, and other activities.

(a) If concurrent activities are planned in a common room, the room shall be arranged to promote and facilitate the activities to minimize disruption through the use of physical barriers for separation.

(b) Space shall be provided for storing recreational equipment and supplies.

(2) The facility shall provide the following minimum space for recreational activities:

(a) in large facilities, 20 square feet per bed;

(b) in small facilities, 20 square feet per bed, or a minimum of 160 square feet total area whichever is greater;

(c) in a limited capacity facility, a minimum of 120 square feet.

(3) If a facility adds 40 square feet per bed to a bedroom area square footage requirement, or adds 80 square feet of recreation space in a separate living room within the resident living unit, the square footage requirements for common recreational space may be reduced by 20 square feet per licensed bed in large and small facilities, not to exceed a reduction of 50 percent of the total common area square footage.

(4) The facility shall provide the following space for

dining activities:

(a) in large and small facilities, a minimum of 15 square feet per licensed bed;

(b) in limited capacity facilities, a minimum of 100 square feet.

(5) If a kitchen and a minimum of 30 square feet of dining area space are provided in a resident unit in a large or small facility, then the common dining area may be reduced by 15 square feet per licensed bed. The maximum reduction shall be 50 percent of the total required dining area.

(6) A separate private living room for family or informal gatherings shall be provided in a large facility as part of the common area space. The private living room shall be a minimum of 110 square feet. If all resident living units include additional living space, the facility is not required to provide a separate private living room.

(7) Corridors and public reception space may not be included in the calculation for required square footage for dining or recreation space.

(8) The facility shall provide ten square feet per bed, or a minimum area of 100 square feet, whichever is greater, for outdoor recreation activities.

R432-6-206. Resident Support Areas.

A large facility shall provide a nourishment station which contains a work counter, a refrigerator, a sink, and cabinets for storage. The station may be located in a single purpose room, dining room, or in a kitchen if staff has 24-hour access to the area.

R432-6-207. Administrative and General Service Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) in large facilities, an administrative office of sufficient size to store records and equipment;

(b) in small and limited capacity facilities, a designated area for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings as follows:

(a) In large facilities, a room shall be provided to serve as a staff lounge with staff lockers for storage. A staff toilet room shall also be provided.

(b) In small and limited care facilities, a storage area shall be identified to store staff belongings.

(3) A large facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-6-208. Special Design Features.

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bath room or toilet room;

(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(5) Building entrances in large and small facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(6) Special units intended to accommodate residents with Alzheimers or Dementia shall comply with Section 8.8 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 1996-97 edition, which is adopted and incorporated by reference.

R432-6-209. General Standards for Details.

(1) Each resident living unit entry door shall be constructed as follows:

(a) be 36 inches wide;

(b) open inward into the resident living unit or designed so that an outward swinging door does not restrict the corridor width;

(c) be lockable, but operable from the inside by single-action lever; and

(d) be individually keyed with the key under resident control.

(2) A master key shall be available for staff.

(3) Door handles for all doors used by residents shall be of the lever type and shall meet ADAAG requirements. Building entrances and exit doors may have panic hardware.

(4) Each door to toilet and bathing facilities shall comply with ADAAG and the following:

(a) be equipped with hardware which permits emergency access from the outside; and

(b) open out or be double acting.

(5) Handrails shall meet the requirements of ADAAG and be provided on both sides of all resident corridors.

R432-6-210. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a room for receiving, holding, and sorting soiled linens, with pre-wash clinical sink facilities and separate hand washing facilities;

(b) a laundry processing room with washer(s) and dryer(s);

(c) storage for laundry supplies;

(d) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and

(e) a central, clean linen storage room(s);

(f) Facilities may provide holding rooms on each level for bagged, soiled linen.

(4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:

(a) a room to store and process both clean and soiled linen;

(b) a washer and dryer; and

(c) a utility sink in the laundry room.

(5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

R432-6-211. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

January 29, 1999	**26-21-5**
Notice of Continuation January 29, 1999	**26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-7. Specialty Hospital - Psychiatric Hospital Construction.
R432-7-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-7-2. Purpose.

The purpose of this rule is to establish construction standards for a specialty hospital for psychiatric services.

R432-7-3. General Design Requirements.

R432-4-1 through R432-4-22 apply to this rule with the following modifications.

R432-7-4. General Construction, Ancillary Support Facilities.

R432-4-23 (2) through (19) applies with the following modifications:

(1) Leaf width for patient room doors and doors to patient treatment rooms shall be a minimum of three feet.

(2) Corridors in patient use areas shall be a minimum of six feet wide.

(3) Grab Bars. Where grab bars are provided, the space between the bar and the wall shall be filled. Bars, including those which are part of such fixtures as soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds. Grab bars shall meet the requirements of ADAAG.

(4) Emergency Electrical Service. An on-site emergency generator shall be provided connecting the following services:

(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(b) critical branch, as defined in 517-33 of the National Electric Code NFPA 70;

(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(d) telephone;

(e) nurse call;

(f) heating equipment necessary to provide heating space to house all patients under emergency conditions;

(g) one duplex convenience outlet in each patient bedroom;

(h) one duplex convenience outlet at each nurses station; and

(i) duplex convenience outlets in the emergency heated part at a ratio of one for each ten patients.

(5) Nurse Call System. A nurse call system is optional. If installed, provisions shall be made for the easy removal or covering of call buttons.

(6) X-ray Equipment. If installed, fixed and mobile x-ray equipment shall conform to Articles 517 and 660 of NFPA 70.

(7) Security glazing. Security glazing and other security features shall be used at all windows of the nursing unit and other patient activity and treatment areas to reduce the possibility of patient injury or escape.

R432-7-5. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and Section 11 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, including Appendix A, 1996-1997 edition (Guidelines) shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) Patient Rooms.

(a) At least two single bed rooms with a private toilet room shall be provided for each nursing unit.

(b) Minimum clear dimensions of closets in patient rooms shall be 22 inches deep and 36 inches wide. The clothes rod shall be of the breakaway type.

(3) The Service Area, Guidelines Section 11.2.B, is modified as follows:

(a) Each bathtub or shower shall be in an individual room or enclosure sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) At least one shower in central bathing facilities shall be designed in accordance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for use by a person with a wheelchair.

(c) A toilet room with direct access from the bathing area, shall be provided at each central bathing area.

(d) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from outside in case of an emergency.

(e) A handwashing fixture shall be provided in each toilet room except as provided in R432-4-24(2)(d).

(f) At least one patient toilet room in each nursing unit shall contain a shower or tub in addition to the toilet and lavatory. Fixtures shall be wheelchair accessible with wheelchair turning space within the room.

(g) Separate activity areas shall be provided for pediatric and adolescent nursing units.

(4) Child Psychiatric Unit, Guidelines Section 11.3, is modified as follows:

(a) Pediatric and adolescent nursing units shall be physically separated from adult nursing units.

(b) Examination and treatment rooms shall be provided for pediatric and adolescent patients separate from adult rooms.

(i) Each room shall provide a minimum of 100 square feet of usable space exclusive of fixed cabinets, fixtures, and equipment.

(ii) Each room shall contain a work counter, storage facilities, and lavatory equipped for handwashing.

(5) In addition to the service area requirements, individual rooms or a multipurpose room shall be provided for dining, education, and recreation.

(a) Insulation, isolation, and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of these multipurpose rooms.

(b) Service rooms may be shared by more than one pediatric or adolescent nursing unit, but shall not be shared with adult nursing units.

(6) A patient toilet room, in addition to those serving bed areas, shall be conveniently accessible from multipurpose rooms.

(7) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

(8) Linen services shall comply with R432-4-24(3).

R432-7-6. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

(1) Linen services, section 11.16.
(2) Windows, Subsection 11.2.A3.
(3) Parking, Subsection 11.1.C.

R432-7-7. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

December 1, 1999	**26-21-5**
Notice of Continuation February 1, 2000	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-8. Specialty Hospital - Chemical Dependency/Substance Abuse Construction.
R432-8-1. Legal Authority.

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

R432-8-2. Purpose.

This rule applies to a hospital that chooses to be licensed as a specialty hospital and which has as its major single service the treatment of patients with chemical dependency or substance abuse. The rule identifies the construction standards for a specialty hospital, if the hospital chooses to have a dual major service, e.g., chemical dependency or substance and psychiatric care, then both of the appropriate specialty hospital construction rules apply.

R432-8-3. General Design Requirements.

See R432-4-1 through R432-4-22.

R432-8-4. General Construction, Ancillary Support Facilities.

R432-4-23 applies with the following modifications:

(1) Corridors. Corridors in patient use areas shall be a minimum six feet wide.

(2) Door leaf width for patient room doors and doors to patient treatment rooms shall be a minimum three feet.

(3) Ceiling finishes. Ceiling construction in patient and seclusion rooms shall be monolithic.

(4) Bed pan flushing devices are optional.

(5) Emergency Electrical Service.

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch, as defined in 517-33 of the National Electric Code NFPA 70;

(iii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient bedroom;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

(6) Nurse Call System.

(a) A nurse call system is optional.

(b) If a nurse call system is installed, provisions shall be made for the easy removal or covering of call buttons.

R432-8-5. General Construction, Patient Service Facilities.

(1) The requirements of R432-4-24 and the requirements of Chapter 7 including Appendix A of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 1996-1997 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) The environment of the nursing unit shall give a feeling of openness with emphasis on natural light and exterior views.

(a) Interior finishes, lighting, and furnishings shall suggest a residential rather than an institutional setting.

(b) Security and safety devices shall be presented in a manner which will not attract or challenge tampering by patients.

(3) Patient rooms.

(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit.

(b) Minimum patient room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms. The areas listed are minimum and do not prohibit larger rooms.

(c) Patient rooms shall include a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches deep by 36 inches wide, suitable for hanging full-length garments. A break-away clothes rod and adjustable shelf shall be provided.

(d) Visual privacy is not required in all multiple-bed rooms, however privacy curtains shall be provided in five percent of multiple-bed rooms for use in treating detoxification patients.

(4) Laundry facilities shall be available to patients, including an automatic washer and dryer.

(5) Bathing facilities shall be provided in each nursing unit at a ratio of one bathing facility for each six beds not otherwise served by bathing facilities within individual patient rooms.

(a) Each bathtub or shower shall be in an individual room or enclosure adequately sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) At least one shower in central bathing facilities shall be designed in accordance with ADAAG for use by a wheelchair patient.

(6) A toilet room with direct access from the bathing area shall be provided at each central bathing area.

(a) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from the outside in case of an emergency.

(b) A handwashing fixture shall be provided for each toilet in each toilet room.

(c) At least one patient toilet room in each nursing unit shall contain a shower or tub in addition to the toilet and lavatory. Fixtures shall be wheelchair accessible.

(7) There shall be at least one seclusion room for each 24 beds, or a fraction thereof, located for direct nursing staff supervision or equipped with a closed circuit television system with a monitor at the nursing station.

(a) Each seclusion room shall be designed for occupancy by one patient. The room shall have an area of at least 60 square feet and shall be constructed to prevent patient hiding, escape, injury, or suicide.

(b) If a facility has more than one nursing unit, the number of seclusion rooms shall be a function of the total number of beds in the facility.

(c) Seclusion rooms may be grouped in a common area.

(d) Special fixtures and hardware for electrical circuits shall be used to provide safety for the occupant.

(e) Doors shall be 44 inches wide and shall permit staff observation of the patient while providing patient privacy.

(f) Seclusion rooms shall be accessed through an anteroom or vestibule which also provides direct access to toilet rooms. The toilet and anteroom shall be large enough to safely manage the patient.

(g) Seclusion rooms including floor, walls, ceiling, and all openings, shall be protected with not less than one-hour-rated construction.

R432-8-6. Additional Specific Category Requirements.

(1) Dining, Recreation and Day Space. The facility layout shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed for all beds in excess of 100.

(a) The facility shall include a minimum of 200 square feet for outpatients and visitors when dining is part of a day care program.

(b) If dining is not part of a day care program, the facility shall provide a minimum of 100 square feet of additional outpatient day space.

(c) Enclosed storage space for recreation equipment and supplies shall be provided in addition to the requirements of day use.

(2) Recreation and Group Therapy Space. At least two separate social areas, one designed for noisy activities and one designed for quiet activities, shall be provided as follows:

(a) At least 120 square feet shall be provided for each area.

(b) The combined area of the two areas shall be at least 40 square feet per patient.

(c) Activity areas may be utilized for dining activities and may serve more than one adult nursing unit.

(d) Activity areas shall be provided for pediatric and adolescent nursing units which are separate from adult areas.

(e) Space for group therapy shall be provided and activity spaces may be used for group therapy activities.

(3) Examination and treatment rooms shall be provided except when all patient rooms are single-bed rooms.

(a) An examination and treatment room may be shared by multiple nursing units.

(b) If provided, the room shall have a minimum floor area of 110 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum allowable floor dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(4) A consultation room shall be provided.

(a) Rooms shall have a minimum floor space of 100 square feet, and be provided at a room-to-bed ratio of one consultation room for each 12 beds.

(b) They shall be designed for acoustical and visual privacy and constructed using wall construction assemblies with a minimum STC rating of 50.

(c) They shall provide appropriate space for evaluation of patient needs and progress, including work areas for evaluators and work space for patients.

(5) A multipurpose room for staff and patient conferences, education, demonstrations, and consultation, shall be provided.

(a) It shall be separate from required activity areas defined in R432-8-6(2).

(b) If provided in the administration area, it may be utilized for this requirement if it is conveniently accessible from a patient-use corridor.

(6) If child education is provided through facility-based programs, a room shall be provided in the adolescent unit for this purpose. The room shall contain at least 20 square feet per pediatric and adolescent bed, but not less than 250 square feet. Multiple use rooms may be used, but must be available for educational programs on a first priority basis.

(7) Pediatric and adolescent nursing units shall be physically separated from adult nursing units and examination and treatment rooms. In addition to the service requirements of R432-8-7, individual rooms or a multipurpose room shall be provided for dining, education, and recreation. Insulation, isolation, and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of these multipurpose rooms. Service rooms may be shared by more than one pediatric or adolescent nursing unit, but shall not be shared with adult nursing units.

(a) A patient toilet room, in addition to those serving bed areas, shall be conveniently accessible from multipurpose rooms.

(b) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

R432-8-7. Exclusions From the Standard.

The following sections of the Guidelines do not apply:

(1) Parking, Section 7.1.D, Subsection 7.2.A4, and 7.2.A.
(2) Infectious Isolation Rooms, Section 7.2.c.
(3) Protective Isolation Rooms, Section 7.2.D.
(4) Seclusion Rooms, Section 7.2.E.
(5) Critical Care Units, Section 7.3.
(6) Newborn Nurseries, Section 7.4.
(7) Pediatric and Adolescent Unit, Section 7.5.
(8) Psychiatric Nursing Unit, Section 7.6.
(9) Surgical Suite, Section 7.7.
(10) Obstetrical Suite, Section 7.8.
(11) Emergency Services, Section 7.9.
(12) Imaging Suite, Section 7.10.
(13) Nuclear Medicine, Section 7.11.
(14) Laboratory Services, Section 7.12.
(15) Renal Dialysis Unit, Section 7.14.
(16) Rehabilitation Therapy Department, Section 7.13.
(17) Respiratory Therapy Services, Section 7.15.
(18) Morgue, Section 7.16.
(19) Pharmacy, Section 7.17.
(20) Linen Services, Section 7.23.

R432-8-8. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

December 1, 1999	**26-21-5**
Notice of Continuation February 1, 2000	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-9. Specialty Hospital - Rehabilitation Construction Rule.
R432-9-1. Legal Authority.

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

R432-9-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment of construction standards for rehabilitation hospitals.

R432-9-3. General Design Requirements.

R432-4-1 through 22 apply to this rule.

R432-9-4. General Construction Ancillary Support Facilities.

R432-4-23 applies with the following modifications:

(1) Corridors in patient use areas shall be a minimum eight feet wide.

(2) Handrails shall comply with the Americans with Disabilities Act Accessibility Guidelines and located on both sides of hallways and corridors used by patients.

(a) The top of the rail shall be 34-38 inches above the floor, except for areas serving children and other special care areas.

(b) Ends of handrails and grab bars shall be constructed to prevent persons from snagging their clothes.

(3) Standards for the Disabled. All fixtures in all toilet and bath rooms, except those in the activities for daily living unit, shall be wheelchair accessible with wheelchair turning space within the room.

(4) Plumbing.

(a) Oxygen and suction systems shall be installed to serve 25 percent of all patient beds.

(b) Installation shall be in accordance with R432-4 and NFPA 99.

(c) Systems serving additional patient beds are optional.

(5) Emergency Electrical Service.

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch, as defined in 517-33 of the National Electrical Code NFPA 70;

(iii) equipment system, as defined in section 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient room;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

R432-9-5. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and the requirements of Section 10 Rehabilitation Facilities and Appendix A of Guidelines for Design and Construction of Hospital and Health Care Facilities (Guidelines) shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) Vocational Services Unit, Guidelines section 10.5 is modified to allow psychological services, social services, and vocational services to share the same office space when the licensee provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(3) Nursing Unit, Section 10.15 is modified as follows:

(a) Fixtures in patient rooms shall be wheelchair accessible.

(b) Patient rooms shall contain space for wheelchair storage separate from normal traffic flow areas.

(c) Toilet room doors shall swing out from the toilet room or shall be double acting.

(d) Patient rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches by 36 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(4) A clean workroom or clean holding room shall be provided for preparing patient care items which shall contain a counter, handwashing facilities, and storage facilities. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(5) A soiled workroom shall be provided containing a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding.

(6) In addition to Guideline Section 10.15.B11, the medicine preparation room or unit shall be under visual control of the nursing staff and have the following:

(a) a minimum area of 50 square feet,

(b) a locking mechanism to prohibit unauthorized access.

(7) Each nursing unit shall have equipment to provide ice for patient treatment and nourishment.

(a) Ice-making equipment may be located in the clean workroom or at the nourishment station if access is controlled by staff.

(b) Ice intended for human consumption shall be dispensed by self-dispensing ice makers.

(8) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-9-6. Exclusions from the Guidelines.

The following sections of the Guidelines do not apply:

(1) Waste Processing Services, Subsection 10.11C.

(2) Linen service, Section 10.12.

(3) Patient Rooms section 10.15A.7.

R432-9-7. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as

provided in 26-21-16.

KEY: health facilities
December 1, 1999 26-21-5
Notice of Continuation February 1, 2000 26-21-2.1
26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-10. Specialty Hospital - Chronic Disease Construction Rule.
R432-10-1. Legal Authority.

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

R432-10-2. Purpose.

The purpose of this rule is to establish construction standards for hospitals that provide services for the diagnosis, treatment or care of persons needing medical services and care in excess of services usually provided in a general acute hospital or skilled nursing home for chronic or long-term illness, injury or infirmity.

R432-10-3. General Design Requirements.

(1) Refer to R432-4-1 through R432-4-23.

(2) All fixtures in public and resident toilet and bathrooms shall be wheelchair accessible with wheelchair turning space within the room.

R432-10-4. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and the requirements of Sections 7 and 8 including Appendix A, of the Guidelines for Design and Construction of Hospital and Health Care Facilities 1996-1997 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(2) The maximum number of beds on each nursing unit shall be 60.

(a) The minimum number of beds in a nursing unit shall be four.

(b) Rooms and spaces comprising the nursing unit shall be contiguous.

(3) At least two single-bed rooms, with a private toilet room containing a toilet, lavatory, and bathing facility, shall be provided for each nursing unit.

(a) The minimum patient room area shall be 120 feet.

(b) In addition to the lavatory in the toilet room, in new construction a lavatory or handwashing sink shall be provided in the patient room.

(c) Ventilation shall be in accordance with Table 6 of Guidelines with all air exhausted to the outside.

(4) The nurses' station shall have handwashing facilities located near the nurses' station and the drug distribution station. The nurses' toilet room, located in the unit, may also serve as a public toilet room.

(5) A nurse call system is not required in facilities that care for developmentally disabled or mentally retarded persons. With the prior approval of the Department, facilities which serve patients who pose a danger to themselves or others may modify the system to alleviate hazards to patients.

(6) Patient rooms shall include a wardrobe, closet, or locker having minimum clear dimensions of 22 inches deep by 36 inches wide, suitable for hanging full length garments.

(7) A clean workroom or clean holding room with a minimum area of 80 square feet for preparing patient care items which shall contain a counter, handwashing facilities, and storage facilities.

(a) The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(b) A soiled workroom with a minimum area of 80 square feet which shall contain a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles and a linen receptacle.

(c) Handwashing sinks and work counters may be omitted in rooms used only for temporary holding of soiled, bagged materials.

(8) If a medication dispensing unit is used it shall be under visual control of staff, including double locked storage for controlled drugs.

(9) Clean Linen Storage.

(a) If a closed cart system is used it shall be stored in a room with a self closing door.

(b) Storage of a closed cart in an alcove in a corridor is prohibited.

(10) Each nursing unit shall have equipment to provide ice for patient treatment and nourishment.

(a) Ice making equipment may be located in the clean workroom or at the nourishment station if access is controlled by staff.

(b) Ice intended for human consumption shall be dispensed by self-dispensing ice makers.

(11) At least one room for toilet training, accessible from the nursing corridor, shall be provided on each floor containing a nursing unit.

(a) All fixtures in this room shall comply with the Americans with Disabilities Act Accessibility Guidelines.

(b) A toilet room, with direct access from the bathing area, shall be provided at each central bathing area.

(c) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from the outside in case of an emergency.

(d) A handwashing fixture shall be provided for each toilet in each toilet room.

(12) Storage. There shall be an equipment storage room with a minimum area of 120 square feet for portable storage.

(13) Resident Support Areas Shall Include the Following:

(a) Occupational Therapy may be counted in the required space of Guidelines section 8.3, Resident Support Area.

(b) Physical Therapy, personal care room and public waiting lobbies may not be included in the calculation of space of Guidelines section 8.3, Resident Support Area.

(c) Storage space for recreation equipment and supplies shall be provided and secured for safety.

(d) There shall be a general purpose room with a minimum area of 100 square feet equipped with table, and comfortable chairs.

(e) A minimum area of ten square feet per bed shall be provided for outdoor recreation. Recreation areas shall be enclosed by a secure fence.

(14) An examination and treatment Room shall be provided except when all patient rooms are single-bed rooms.

(a) The examination and treatment room may be shared by multiple nursing units.

(b) The room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and

work counters, whether fixed or movable.

(c) The minimum allowable room dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing; work counter; storage facilities; and desk, counter, or shelf space for writing.

(15) A room shall be arranged to permit evaluation of patient needs and progress.

(a) The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.

(b) If psychological services are provided, then the unit shall contain an office and work space for testing, evaluation, and counseling.

(c) If social services are provided, then the unit shall contain office space for private interviewing and counseling.

(d) If vocational services are provided, then the unit shall contain office and work space for vocational training, counseling, and placement.

(e) Evaluation, psychological services, social services, and vocational services may share the same office space when the owner provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(16) Pediatric and Adolescent Unit.

(a) Pediatric and adolescent nursing units shall comply with the spatial standards in section 7.5 of the Guidelines.

(b) There shall be an area for hygiene, toileting, sleeping, and personal care for parents if the program allows parents to remain with young children.

(c) Service areas in the pediatric and adolescent nursing unit shall conform to the standards of section 7.5.F. of the Guidelines and the following:

(i) Multipurpose or individual rooms shall be provided in the nursing unit for dining, education, and recreation.

(ii) A minimum of 20 square feet per bed shall be provided.

(iii) Installation, isolation and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of multipurpose rooms.

(iv) Service rooms may be shared by more than one pediatric or adolescent nursing unit, but may not be shared with adult patient units.

(v) A patient toilet room, in addition to those serving bed areas, shall be conveniently located to each multipurpose room and to each central bathing facility.

(vi) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

(d) At least one single-bed isolation room shall be provided in each pediatric unit. Each isolation room shall comply with the following:

(i) Room entry shall be through an adjacent work area which provides for aseptic control, including facilities separate from patient areas for handwashing, gowning, and storage of clean and soiled materials. The work area entry may be a separate, enclosed anteroom.

(ii) A separate, enclosed anteroom for an isolation room is not required but, when provided, shall include a viewing panel for staff observation of the patient from the anteroom.

(iii) One anteroom may serve several isolation rooms.

(iv) Toilet, bathing, and handwashing facilities shall be arranged to permit access from the bed area without entering or passing through the work area of the vestibule or anteroom.

(17) Rehabilitation therapy, Physical Therapy and Occupational Therapy areas shall include:

(a) Waiting areas to accommodate patients in wheelchairs, including room for turning wheelchairs.

(b) Storage space, with separate storage rooms for clean and soiled linen.

R432-10-5. General Construction.

(1) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing though building rooms or corridors.

(2) Grab bars and handrails shall comply with ADAAG and shall be installed in all toilet rooms.

(a) Handrails shall be provided on both sides of corridors used by patients.

(b) The top of the rail shall be 32 inches above the floor, except for special care areas.

(c) Ends of the handrails and grab bars shall be constructed to prevent persons from snagging their clothes.

(3) Sound control shall be maintained as referred to in Table 1 in R432-5-12(5).

(4) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers may not be used.

(5) Signs. The following signs shall comply with ANSI A117.1 and be located in corridors:

(a) general circulation direction signs in corridors.

(b) identification sign or number at each door.

(c) emergency evacuation directional signs.

R432-10-6. Construction Features.

(1) Mechanical tests shall be conducted prior to the final Department construction inspection. Written test results shall be retained in facility maintenance files and available for Department review.

(2) Any insulation containing any asbestos is prohibited.

(3) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by patients.

(a) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by patients.

(b) Furnace and boiler rooms shall be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to a temperature not to exceed 90 degrees F. When ambient outside air temperature is higher, maximum temperature may be 97 degrees F.

(c) A relative humidity between 30 percent and 60 percent shall be provided in all patient areas.

(d) Evaporative coolers may only be used in kitchen hood systems that provide 100% outside air.

(e) Isolation rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. No air from the isolation room may be recirculated into the building system.

(f) Supply and return systems shall be ducted. Common returns using corridors or attic spaces as return plenums are

prohibited.

(g) The bottom of ventilation supply and return opening shall be at least three inches above the floor.

(4) Filtration shall be provided when mechanically circulated outside air is used see section 8.31.D5, of the Guidelines. All areas for inpatient care, treatment, or diagnosis, and those areas providing direct service or clean supplies shall have a minimum of one filter bed with an efficiency of 80.

(5) Fans and dampers shall be interconnected so that activation of dampers will automatically shut down fans.

(a) Smoke dampers shall be equipped with remote control reset devices.

(b) Manual reopening is permitted where dampers are located for convenient access.

(6) All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat actuated fan controls. Cleanout openings shall be provided every 20 feet in horizontal sections of the duct systems serving these hoods.

(7) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other non-patient areas.

(8) Handwashing facilities shall comply with section 8.11.E1 of the Guidelines and include the following:

(a) Handwashing facilities shall be arranged to provide sufficient clearance for single-lever operating handles.

(b) Handwashing facilities shall be installed to permit use by persons in wheelchairs.

(c) Fixtures in patient use areas shall be equipped with cross or tee handles or single lever operating handles.

(9) Dishwashers, disposers and appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed.

(10) Kitchen grease traps shall be located and arranged to permit easy access without the need to enter the food preparation or storage area.

(11) Hot water systems. Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic mixing valves. Mixing valves may be installed on the recirculating system or on individual inlets to appliances.

(12) Drainage Systems. Building sewers shall discharge into community sewerage except, where such a system is not available, the facility shall treat its sewage in accordance with local requirements and Department of Environmental Quality requirements.

(13) Piping and Valve systems. All piping and valves in all systems, except control line tubing, shall be labeled to show content of line and direction of flow. Labels shall be permanent type, either metal or paint, and shall be clearly visible to maintenance personnel.

(14) oxygen and suction systems shall be installed in accordance with the requirements of section 7.31.E5 of the Guidelines and Table 1 of R432-4.

(15) Electric materials shall be new and listed as complying with standards of Underwriters Laboratories, Inc., or other equivalent nationally recognized standards. The owner shall provide written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(16) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with at least the mid range requirements shown in Tables 1A and 1B of Illuminating Engineering Society of North America IESNA, publication RP-29-95, Lighting for Health Care Facilities, 1995 edition. Automatic Emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(17) Receptacles shall comply with section 8.32.A4c of the Guidelines and shall include:

(a) Each examination and work table shall have access to minimum of two duplex outlets.

(b) Receptacle cover plates on electrical receptacles supplied for the emergency system shall be red.

(18) Emergency Electrical Service shall comply with section 8.12B of the Guidelines and shall include:

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch as defined in 517-33 of the National Electric Code NFPA 70;

(iii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient room;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

(c) fuel storage capacity shall permit continuous operation for 48 hours.

R432-10-7. Excluded Section of the Guidelines.

The following sections of the Guidelines do not apply:

(1) Parking, Section 7.1.D.
(2) Nursing Unit, Section 7.2.
(3) Critical Care Unit, Section 7.3.
(4) Newborn Nurseries, Section 7.4.
(5) Psychiatric Nursing Unit, Section 7.6.
(6) Surgical Suite, Section 7.7.
(7) Obstetrical Facilities, Section 7.8.
(8) Emergency Services, Section 7.9.
(9) Imaging Suite, Section 7.10.
(10) Nuclear Medicine, Section 7.11.
(11) Rehabilitation Therapy, Section 7.13.
(12) Respiratory Therapy, Section 7.15.
(13) Morgue, Section 7.15.
(14) Linen Services, Section 7.23.
(15) Parking, Section 8.1.F.
(16) Linen Services, Section 8.11.
(17) Mechanical Standards, Section 8.31.
(18) Electrical Standards, Section 8.32.
(19) Bathing facilities, Section 8.2.C.11.
(20) Clean utility rooms, Section 8.2.C5.
(21) Soiled Utility rooms, Section 8.2.C6.
(22) Windows, Section 8.2.B3.

R432-10-8. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

December 1, 1999	**26-21-5**
Notice of Continuation February 1, 2000	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-11. Orthopedic Hospital Construction.
R432-11-1. Legal Authority.

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

R432-11-2. Purpose.

The purpose of this rule is to establish construction standards for a specialty hospital for orthopedic services.

R432-11-3. General Design Requirements.

(1) See R432-4-1 through R432-4-22.

(2) All fixtures in resident toilet and bathrooms shall be wheelchair accessible with wheelchair turning space within the room.

R432-11-4. General Construction.

See R432-4-23 with the following modifications:

(1) Corridors in patient use areas shall be a minimum eight feet wide.

(2) Handrails shall be provided on both sides of corridors and hallways used by patients and meet the Americans with Disabilities Act Accessibility Guidelines requirements. The top of the rail shall be 34 inches above the floor except for areas serving children and other special care areas.

(3) Plumbing, including medical gas and suction systems are required.

(4) An emergency electrical service is required. An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:

(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;

(b) critical branch as defined in 517-33 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;

(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;

(d) telephone;

(e) nurse call;

(f) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(g) one duplex convenience outlet in each patient room;

(h) one duplex convenience outlet at each nurse station;

(i) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients;

(j) fuel storage capacity shall permit continuous operation for at least 48 hours.

(5) If installed, fixed and mobile X-ray equipment shall comply with Articles 517 and 660 of NFPA 70, which is adopted and incorporated by reference.

R432-11-5. General Construction. Patient Service Facilities.

(1) Requirements of R432-4-24 and the requirements of Section 7 including Appendix A of Guidelines for Design and Construction of Hospital and Health Care Facilities, 1996-1997 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(2) Nursing Units shall meet the following:

(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit.

(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 140 square feet in single-bed rooms and 125 square feet per bed in multiple-bed rooms. The listed areas are minimum and do not prohibit larger rooms.

(3) Imaging Suites. Imaging facilities for diagnostic procedures, include the following: radiology, mammography, computerized scanning, ultrasound and other imaging techniques.

(a) Imaging facilities may be provided within the facility or through contractual arrangement with a qualified radiology service or nearby hospital.

(b) If imaging facilities are provided in-house, they shall meet the requirements for an imaging suite defined in Guidelines for Design and Construction of Hospital and Health Care Facilities, section 7.10.

(4) Laboratory Services.

(a) Laboratory space and equipment shall be provided in-house for testing blood counts, urinalysis, blood glucose, electrolytes, blood urea nitrogen (BUN), and for the collection, processing, and storage of specimens.

(b) In lieu of providing laboratory services in-house, contractual arrangements with a Department-approved laboratory shall be provided. Even when contractual services are arranged, the facility shall maintain space and equipment to perform the tests listed in R432-105-5(7)(a).

(5) Pharmacy Guidelines.

(a) The size and type of services provided in the pharmacy shall depend on the drug distribution system chosen and whether the facility proposes to provide, purchase, or share pharmacy services. A description of pharmacy services shall be provided in the functional program.

(b) There shall be a pharmacy room or suite, under the direct control of staff, which is located for convenient access and equipped with appropriate security features for controlled access.

(c) The room shall contain facilities for the dispensing, basic manufacturing, storage and administration of medications, and for handwashing.

(d) In lieu of providing pharmacy services in-house, contractual arrangements with a licensed pharmacy shall be provided. If contractual services are arranged, the facility shall maintain space and basic pharmacy equipment to prepare and dispense necessary medications in back-up or emergency situations.

(e) If additional pharmacy services are provided, facilities shall comply with requirements of Guidelines section 7.17.

(6) Linen Services shall comply with R432-4-24(3).

(7) Patient bathing facilities shall be provided in each nursing unit at a ratio of one bathing facility for each eight beds not otherwise served by bathing facilities within individual patient rooms.

(a) Each bathtub or shower shall be in an individual room or enclosure adequately sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) Showers in central bathing facilities shall have a floor area of at least four feet square, be curb free, and be designed for use by a wheelchair patient in accordance with ADAAG.

(c) At least one island-type bathtub shall be provided in each nursing unit.

(8) Toilet Facilities. A toilet room, with direct access from the bathing area shall be provided at each central bathing area.

(a) Doors to toilet rooms shall comply with ADAAG. The doors shall permit access from the outside in case of an emergency.

(b) A handwashing fixture shall be provided for each toilet in each toilet room.

(c) Fixtures shall be wheelchair accessible.

(9) Patient Day Spaces.

(a) The facility shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed for the first 100 beds and 27 square feet per bed for all beds in excess of 100.

(b) In addition to the required space defined for inpatients, the facility shall include a minimum of 200 square feet for outpatient and visitors when dining is part of a day care program. If dining is not part of a day care program, the facility shall provide a minimum of 100 square feet of additional outpatient day space.

(c) Enclosed storage space for recreation equipment and supplies shall be provided in addition to the requirements of R432-105-4.

(10) Examination and Treatment Room. An examination and treatment room shall be provided except when all patient rooms are single-bed rooms.

(a) An examination and treatment room may be shared by multiple nursing units.

(b) When provided, the room shall have a minimum floor area of 120 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum floor dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(11) Consultation Room. A consultation room, arranged to permit an evaluation of patient needs and progress, shall be provided. The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.

(12) Surgical Unit. If surgical services are offered, facilities shall be provided in accordance with the Guidelines.

R432-11-6. Excluded Guideline Sections.

The following sections of the Guidelines do not apply:

(1) Parking, section 7.1.D.

(2) Critical Care Unit, Section 7.3.

(3) Newborn Nurseries, Section 7.4.

(4) Psychiatric Nursing Unit, Section 7.6.

(5) Obstetrical Facilities, Section 7.8.

(6) Emergency Services, Section 7.9.

(7) Nuclear Medicine, Section 7.11.

(8) Morgue, Section 7.16.

(9) Linen Services, Section 7.23.

R432-11-7. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

December 1, 1999	**26-21-5**
Notice of Continuation February 1, 2000	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-12. Small Health Care Facility (Four to Sixteen Beds) Construction Rule.
R432-12-1. Legal Authority.

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

R432-12-2. Purpose.

This rule defines construction standards for small health care facilities which are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability to exit a building unassisted in an emergency.

R432-12-3. General Design Requirements.

Refer to R432-4-1 through R432-4-23.

R432-12-4. General Construction Requirements.

(1) Table 1 identifies the levels of care and construction requirements which apply.

TABLE 1
LEVELS OF CARE AND CONSTRUCTION REQUIREMENTS SUMMARY

	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
No. residents	1 plus	4-16	4-16	6-16
Types of Facilities	SNF ICF ICF/MR (17 plus) Mental Health Facility (17 plus)	ICF/MR Home for Aging Social Rehab. Health Care Nursing Mental Health Facility	ICF/MR Correction Home Mental Health Facility	ICF/MR Mental Health Facility Home for Aging Social Rehab.
Staff Availability or Coverage	24 hours/ day	24 hours/ day	24 hours/ day	24 hours/ day
Licensed Nursing Hours	16-24	0-16	0-16	0-16
Type of Service				
medical nursing	yes	yes	yes	yes
dietary	yes	yes	yes	yes
social svc	yes	yes	as required	as required
phy therapy	yes	as required	as required	as required
rec therapy	yes	as required	as required	as required
other therapy	yes	as required	as required	as required
Resident Capable of Self Preservation Unassisted	No, they are non ambulatory non-mobile	No, they are non ambulatory non-mobile	Yes, they are ambulatory mobile	Yes, they are ambulatory mobile
Resident Exit Ability in an Emergency	restricted, physical or mental disability and medical condition	restricted, physical or mental disability	restricted, chemical or physical restraints	not restricted
Accessible Rooms	100%	10% or 100% if	10%	10%

		Physical Rehab.		
Construction Requirements code or regulation	NFPA 101 (1997) 12-1.3	NFPA 101 (1997) 12-1.3	NFPA 101 (1997) 12-1.3	Utah Fire Prevention Board Rules R710-3; UBC appendix Chapter 3
fire rating of const	1 hour	1 hour	1 hour	No requirement
sprinkler	yes	yes	yes	consider res. mobility
smoke detector	yes	yes	yes	yes
manual fire alarm	yes	yes	yes	yes
above 3 systems interconnected	yes	yes	yes	no
corridor	8 feet	6 feet	5 feet	As required by UBC
resident room door width	44 inch	44 inch	36 inch	36 inch
nurse call system	yes	yes	optional	yes

(2) General Requirements.

(a) Level I facilities shall meet the Nursing Facility Construction standards in R432-5.

(b) Level II and III facilities shall meet the construction and design requirements identified in this section, unless specifically exempted.

(c) Level IV facilities shall meet the Assisted Living Facility Type I Construction standards in R432-6.

(d) Level I, II, III and IV facilities shall comply with the Americans with Disabilities Act Accessibility Guidelines.

(e) Level II and III facilities shall conform to the life safety code requirements of NFPA 101, Chapter 12 as specified in Sections 12.1.3, which is adopted and incorporated by reference.

(f) Level IV facilities shall conform to the fire safety provisions of R432-710-3.

R432-12-5. Common Areas.

There shall be a common room or rooms for dining, sitting, meeting, visiting, recreation, worship, and other activities that is of sufficient space or separation to promote and facilitate the activity without interfering with concurrent activities or functions.

(1) There shall be at least 30 square feet computed per license bed capacity but no less than a total of 225 square feet.

(2) There shall be sufficient space for necessary equipment and storage of recreational equipment and supplies.

R432-12-6. Resident Rooms.

(1) The maximum room capacity shall be two residents. Provisions shall be made for individual privacy.

(2) There shall be at least 100 square feet for a single-bed

room and 160 square feet in shared rooms, exclusive of toilets and closets.

(a) Minor encroachments such as columns, lavatories, and door swings may be ignored in determining space requirements if function is not impaired.

(b) In a facility licensed prior to 1977, the Department may grant a variance, pursuant to R432-2-18, to allow 80 square feet per bed for a single-bed room and 60 square feet per bed for a multiple-bed room.

(3) In multiple-bed rooms there shall be enough clearance between beds to allow movement of beds, wheelchairs, and other equipment without disturbing residents.

(4) No room commonly used for other purposes shall be used as a sleeping room for any resident. This includes any hall, unfinished attic, garage, storage area, shed, or similar detached building.

(5) No bedroom may be used as a passageway to another room, bath, or toilet.

(6) Bedrooms shall open directly into a corridor or common living area, but not into a food-preparation area.

(7) Bedrooms shall not be located in a basement or on an upper floor unless residents have access to one exit from that level leading directly to the exterior at grade level.

(8) Each bedroom shall be provided with light and ventilation by means of an operable window which opens to the outside or to a court that opens to the sky. Where the window requires the use of tools or keys for operation, such devices shall be stored in a prominent location on each floor convenient for staff use.

(9) Each resident shall have a wardrobe, closet, or space suitable for hanging clothing and personal belongings with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall. Space accommodations shall be provided within each resident's room. Facilities serving infants or children may substitute a chest of drawers for the closet.

R432-12-7. Toilet and Bathing Facilities.

Toilet rooms and bathrooms shall be mechanically exhausted, conveniently located, and accessible to, and usable by all persons accepted for care.

(1) There shall be one toilet and washbasin on each floor for each four occupants, including staff and live-in family. A facility licensed for eight beds or more shall have distinct and separate toilet and bathing facilities for live-in family and staff.

(2) There shall be at least one bathtub or shower for each six residents.

(a) In a multi-story building there shall be at least one bathtub or shower on each floor that has resident bedrooms.

(b) Each resident shall have access to at least one bathtub and one shower.

(c) There shall be at least one shower or bathtub which opens from a corridor designed for use by resident using a wheelchair with room for staff assistance that meets ADAAG standards.

(3) Each central shared bathroom shall have a toilet and washbasin.

(4) Toilet and bathing facilities may not open directly into food preparation areas.

(5) There shall be adequate provision for privacy and safety, including grab bars, in accordance with ADAAG, at each toilet, tub, and shower used by residents.

(6) All toilets, showers, and tub facilities shall have walls of impermeable, cleanable, and easily sanitized surfaces.

R432-12-8. Service Areas.

There shall be adequate space and equipment for the following services or functions. Except where the word "room" or "office" is used, service may be provided in a multi-purpose area.

(1) Administrator's office with space for private interviews, storage of files and records, and a public reception or information area.

(2) Telephone area for private use by residents or visitors.

(3) A control station with a well-lighted desk, and equipment for keeping records and supplies.

(4) Closets or compartments for the safekeeping of staff's personal items.

(5) Medication preparation and storage area, including locked drug cabinets, work counter, refrigerator, and sink with running water located near the control station.

(6) Clean linen storage area.

(7) Soiled workroom mechanically ventilated to the outside. In a Level II facility this room shall contain a clinical sink or equivalent flushing rim fixture, handwashing facilities, work counter, waste and soiled linen receptacle.

(8) Housekeeping room, which in large facilities over eight residents shall contain a service sink.

(9) Equipment room or separate building for mechanical and electrical equipment.

(10) Storage room for maintenance supplies.

(11) General storage area within the facility or in a separate building convenient for daily access with at least five square feet of storage per bed;

(12) Area outside the facility for sanitary storage and disposal of waste.

R432-12-9. Dietary Services.

Food service facilities and equipment shall comply with the Utah Department of Health Food Service Sanitation Regulations. According to the size of the facility and services offered, there shall be adequate space and equipment for the following:

(1) Food preparation;

(2) Handwashing located in the food preparation area;

(3) Serving and distributing resident meals;

(4) Dining space for residents, staff, and visitors;

(5) Dishwashing, receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to use areas;

(6) Storage, including cold storage and space for at least a seven-day supply of staple foods and a three-day supply of perishable foods, shall be maintained in the facility.

R432-12-10. Linen Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for resident care. Processing may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(2) The capacity of central storage shall be sufficient for four days operation or two normal deliveries, whichever is greater.

(3) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(4) Provisions shall be made to keep soiled linen separate from clean linen.

(5) Provision shall be made for storage of laundry supplies.

(6) Equipment shall be arranged to permit an orderly work flow and reduce cross traffic that may mingle clean and soiled operations.

(7) At least one washing machine and dryer, and ironing equipment shall be available for use by residents who wish to do their personal laundry.

R432-12-11. Nurse Call System.

A nurse call system is required in Level I, II and IV facilities. A nurse call system is optional in Level III facilities.

(1) Each resident's room shall be served by at least one calling station and each bed shall be provided with a call button including operating switch and cord from the wall station to each bed.

(2) Two call buttons serving adjacent beds may be served by one calling station.

(3) Calls shall activate a visible signal in the corridor at the resident's door and the control station.

(4) The system shall be designed so that a signal light activated at the resident's station will remain lighted until turned off at the resident's calling station.

(5) A system that provides two-way voice communication shall be equipped at each calling station with an indicator light that remains lit as long as the voice circuit is operating.

R432-12-12. Rehabilitation Therapy.

A facility that offers on-site specialized rehabilitation services shall provide space and equipment necessary to meet the intent of the approved program. The following shall be available in the facility:

(1) Supplies and equipment storage, including separate clean and soiled linen;

(2) Convenient handwashing facilities;

(3) Space and equipment to carry out specific types of therapy;

(4) Provision for resident privacy;

(5) Convenient access to a room that can be used to train and educate staff and residents;

(6) Dressing rooms for residents.

R432-12-13. Doors and Windows.

(1) Doors to all rooms containing bathtubs, sitz baths, showers and water closets for resident use shall be equipped with hardware which may be secured for privacy yet permit emergency access from the outside without the use of keys.

(2) Each room, including all resident toilet rooms and bathing rooms that may be used by residents, staff, or employees confined to wheelchairs, shall have at least one door with a minimum clear width of 34 inches.

(3) Resident-room doors and exit doors shall be at least 36 inches wide, defined by the width of the door leaf.

(4) Thresholds and expansion-joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts and to prevent tripping.

(5) Every room intended for 24-hour occupancy shall have a window that opens to the building exterior or to a court that is open to the sky.

(6) Windows and outer doors shall have insect screens.

R432-12-14. Grab Bars and Handrails.

(1) Grab bars shall meet the requirements of ADAAG.

(2) In Level I and II facilities, there shall be handrails on both sides of all corridors normally used by residents. Handrail profiles shall be graspable in accordance with NFPA 101 Chapter 5, which is adopted and incorporated by reference and the Americans with Disabilities Act Accessibility Guidelines.

(3) Ends shall be returned to the wall or otherwise arranged to minimize potential for injury.

R432-12-15. Lavatories and Plumbing Fixtures.

(1) All lavatories used by residents shall be trimmed with valves, with cross, tee or single lever devices.

(2) Showers and tubs shall have slip-resistant surfaces.

(3) Lavatories shall be securely anchored to withstand a vertical load of not less than 250 pounds on the front of the fixture.

(4) A mirror shall be provided at each handwashing facility except as otherwise noted.

(a) The tops and bottoms of mirrors may be at levels for use by sitting and standing individuals, or additional mirrors may be provided for residents using a wheelchair.

(b) One separate full-length mirror in a single room may serve for wheelchair occupants in that room.

R432-12-16. Ceilings.

(1) Ceiling height in the facility shall be a minimum of eight feet with the following exceptions:

(a) Rooms containing ceiling-mounted equipment shall have adequate height for the proper functioning of that equipment.

(b) Ceilings in corridors, storage rooms, and toilet rooms shall be at least seven feet ten inches.

(c) Building components and suspended tracks, rails and pipes located in the path of normal traffic may not be less than seven feet above the floor.

(2) Where existing conditions make the above impractical, clearances shall be sufficient to avoid injury and at least six feet four inches above the floor.

R432-12-17. Heat and Noise Reduction.

(1) Rooms containing heat producing equipment such as a furnace, heater, washer, or dryer shall be insulated and ventilated to prevent floors of overhead occupied areas and adjacent walls from exceeding a temperature of 10 degrees Fahrenheit (6 degrees C) above the ambient room temperature of such occupied areas.

(2) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated may not be located directly over resident-bed areas unless special provisions are

made to minimize such noise.

(3) Sound transmission limitations shall conform to Table 2.

TABLE 2
SOUND TRANSMISSION LIMITATIONS
IN LONG-TERM CARE FACILITIES

	AIRBORNE SOUND TRANSMISSIONS Class (STC)(a)	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room(b)	40	40
Service areas to residents' room(c)	45	45

(a) Sound transmission class (STC) shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above residents' rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-12-18. Floor, Wall, and Ceiling Finishes.

(1) Floor materials shall be easily cleanable and appropriate for the location.

(a) Floors and floor joints in areas used for food preparation and food assembly shall be water-resistant, grease proof, and resistant to food acids.

(b) In all areas subject to frequent wet cleaning, floor materials may not be physically affected by germicidal cleaning solutions.

(c) Floors that are subject to traffic while wet, (such as shower and bath areas, kitchen and similar work areas), shall have a non-slip surface.

(d) Carpet and carpet pads in resident areas shall be applied with adhesive or stretched taut and maintained without loose edges or wrinkles which might create hazards or interfere with the operation of wheelchairs, walkers, or wheeled carts.

(2) Wall bases in areas subject to wet cleaning shall be coved and tightly sealed.

(3) Wall finishes shall be washable.

(a) Walls in the immediate area of plumbing fixtures shall be smooth and moisture resistant.

(b) Finish, trim, walls, and floor constructions in dietary and food preparation and storage areas may not have spaces that may harbor rodents and insects.

(4) Floor and wall openings for pipes, ducts, and conduits shall be sealed tightly to resist fire and smoke and to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(5) All exposed ceilings and ceiling structures in resident and staff work areas shall have finishes that are readily cleanable with ordinary housekeeping equipment. Ceilings in the dietary area and other areas where dust fallout might create a potential problem shall have a finished ceiling that covers all conduits, piping, duct work, and exposed construction systems.

R432-12-19. Heating and Cooling.

There shall be adequate and safe heating and cooling equipment to maintain comfortable temperatures in the facility.

(1) The heating system shall be capable of maintaining temperatures of 80 degrees F (27 degrees C) in areas occupied by residents.

(2) The cooling system shall be capable of maintaining temperatures of 72 degrees F (22 degrees C) in areas occupied by residents.

R432-12-20. Ventilation.

(1) All rooms and areas in the facility shall have provision for positive ventilation.

(a) While natural window ventilation for nonsensitive areas and resident rooms may be utilized where weather permits, mechanical ventilation shall be provided for interior areas and during periods of temperature extremes.

(b) Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service.

(2) Fresh air intakes shall be located as far as possible from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or from areas which may collect vehicular exhaust or other noxious fumes.

(3) Furnace rooms shall be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to an Effective Temperature of 90 degrees F (32.5 degrees C). When the ambient outside air temperature is higher than 90 degrees F, then the maximum temperature may be 97 degrees F (36 degrees C).

(4) Exhaust hoods in food-preparation centers shall comply with R392, the Utah Department of Health Food Service Sanitation Regulations. All hoods over cooking ranges shall be equipped with grease filters.

(5) Non-resident as well as resident areas where specific requirements are not given shall be ventilated in accordance with ASHRAE Standard 62-1981, "Ventilation for Acceptable Indoor Air Quality Including Requirements for Outside Air."

(6) Air from areas with odor problems, including toilet rooms, baths, soiled linen storage and housekeeping rooms, shall be exhausted to the outside and not recirculated.

(7) In Level II facilities, fans and dampers shall be interconnected so that activation of dampers will automatically shut down all but exhaust fans.

(8) Supply and return systems shall be in duct. Common returns using corridors or attic spaces as plenums are prohibited.

R432-12-21. Plumbing and Hot Water Systems.

(1) Water supply systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(2) Water distribution systems shall be arranged to provide for continuous hot water at each hot water outlet.

(3) Hot water provided to resident tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic-mixing valves at appropriate temperatures for comfortable use within a range of 105 to 115 degrees F. These valves may be installed on the recirculating system or on individual inlets to appliances.

(4) As a minimum, water heating systems shall provide capacity at temperatures and amounts indicated in Table 3, Hot

Water Use. Water temperature is taken at the point of use or inlet to the equipment.

TABLE 3
HOT WATER USE

	Clinical	Dietary(1)	Laundry
Gallons per Hour per Bed(a)	3	2	2
Temperature (C)(b)	43	49	71(b)
Temperature (F)(b)	105	120	160(b)

(1) Provisions shall be made to provide 180 degree F (82 degree C) rinse water at warewasher (may be by separate booster).

(a) Quantities indicated for design demand of hot water are for general reference minimums and may not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed. Design shall also be affected by temperatures of cold water used for mixing, length of run and insulation relative to heat loss, etc.

(b) Provisions shall be made to provide 160 degree F (71 degree C) hot water at the laundry equipment when needed.

R432-12-22. Drainage Systems.

(1) Drainage piping may not be installed within the ceiling or installed in an exposed location in food preparation centers, food serving facilities, food storage areas, central services, and other sensitive areas. Where overhead drain piping is unavoidable in these areas, as may occur in existing facilities, special provision shall be made to protect the space below from possible leakage, condensation, or dust particles.

(2) Building sewers shall discharge into a community sewerage system. Where such a system is not available, the facility shall treat its sewage in accordance with local and state regulations.

R432-12-23. Electrical Systems.

(1) All electrical materials shall be tested and approved by Underwriters Laboratory.

(2) The electrical installations, including alarm and nurse call system, if required, shall be tested to demonstrate that equipment installation and operation is as intended and appropriate. A written record of performance tests of special electrical systems and equipment shall show compliance with applicable codes.

(3) Switchboards and Power Panels.

(a) The main switchboard shall be located in an area separate from plumbing and mechanical equipment and be accessible only to authorized persons.

(b) The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and located in a dry, ventilated space.

(c) Overload protection devices shall operate properly in the ambient room temperatures, except for existing Level IV facilities.

(d) Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve.

(4) Lighting. All spaces within buildings that house people, machinery, equipment, or approaches to buildings shall have fixtures for lighting. (See Table 4.)

(a) Resident rooms shall have general and night lighting.

(i) A reading light shall be provided for each resident.

(ii) Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.

(iii) At least one night light fixture shall be controlled at the entrance to each resident room.

(iv) All controls for lighting in resident areas shall operate quietly.

(b) Parking lots shall have fixtures for lighting to provide light at levels in the IES Lighting Handbook, 1987, Volume 2, Applications by the Illuminating Engineering Society of North America.

(c) Lighting levels shown in Table 4 shall be used as minimum standards and do not preclude the use of higher levels that may be needed to insure the health and safety of the specific facility population served.

TABLE 4
SMALL HEALTH CARE FACILITIES LIGHTING STANDARDS

Physical Plant Area	MINIMUM FOOT-CANDLES Level I, II, III Facilities	Level IV Facilities
Corridors		
Day	20	15
Night	10	10
Exits	20	20
Stairways	20	20
Nursing Station		
General	30	30
Charting	75	75
Med. Prep.	75	75
Pt./Res. Room		
General	10	10
Reading/Mattress Level	30	30
Toilet area	30	30
Lounge		
General	10	10
Reading	30	30
Recreation	30	30
Dining	30	30
Laundry	30	30

Based on lighting guidelines published in "Lighting for Health Care Facilities", Illuminating Engineering Society of North America, 1985 edition.

(5) Each resident room shall have duplex grounding type receptacles as follows:

(a) one located on each side of the head of each bed;

(b) one for television, if used; and

(c) one on each other wall.

(6) Receptacles may be omitted from exterior walls where construction would make installation impractical.

(7) Duplex grounded receptacles for general use shall be installed in all corridors.

R432-12-24. Emergency Power System.

(1) Facilities that provide care for persons who require electrically operated life-support systems, or when required by Table 1, shall be equipped with an emergency power system.

(2) The following services shall be connected to the emergency generator Life Safety Branch as defined in section 517-32, critical branch as defined in 517-33 and Equipment systems defined its 517-34 of the National Electric Code NFPA 70, which is adopted and incorporated by reference.

(3) Power need not be provided to all building heating and ventilation equipment if it is provided to a common area sufficient in size to accommodate temporary beds on a short-term emergency basis.

(4) Automatic transfer switches shall transfer essential

electrical loading to the circuits described above within 10 seconds of any interruption of normal power.

(5) The emergency generator shall be fueled with a storable fuel source such as diesel fuel, gasoline, or propane. At least 48 hours of fuel shall be available.

(6) All other facilities shall make provision for essential emergency lighting and heating during an emergency to meet the needs of residents. All emergency heating devices shall be approved by the local Fire Marshal.

R432-12-25. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
December 1, 1999 26-21-5
Notice of Continuation February 1, 2000

R432. Health, Health Systems Improvement, Licensing.
R432-13. Freestanding Ambulatory Surgical Center Construction Rule.
R432-13-1. Legal Authority.

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

R432-13-2. Purpose.

The purpose of this rule is to establish construction and physical plant standards for the operation of a freestanding surgical facility that provides surgical services to patients not requiring hospitalization.

R432-13-3. General Design Requirements.

(1) Ambulatory Surgical Centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of the Guidelines for Design and Construction of Hospital and Health Care Facilities, Section 9.2., 9.5 and 9.9 including Appendix A, 1996-1997 edition (Guidelines). Where a modification is cited, the modification supersedes conflicting requirements of R432-4 or the Guidelines.

(2) Ambulatory Surgical Centers shall consist of at least two operating rooms and support facilities.

(3) Ambulatory Surgical Centers shall be equipped to perform general anesthesia. Flammable anesthetics may not be used in Ambulatory Surgical Centers.

(4) Ambulatory Surgical Centers which are located within a building not constructed in accordance with NFPA 101, Life Safety Code, Section 12-6, shall be physically separated in accordance with requirements of the local building official having jurisdiction.

(a) The facility shall have at least two exits leading directly to the exterior of the building.

(b) Design shall preclude unrelated traffic through units or suites of the licensed facility.

R432-13-4. General Construction, Patient Facilities.

(1) Adequate sterile supplies shall be maintained in the facility to meet the maximum demands of one day's case load.

(2) Operating rooms for cystoscopic procedures shall comply with Section 7.7.A4 of the Guidelines.

(3) A toilet room shall be readily accessible to recovery rooms and recovery lounge.

(4) Change areas shall comply with Guidelines subsection 9.5.F5.(i) and shall be arranged to accommodate a one way traffic pattern enabling personnel to change and directly enter the operating room corridor.

(5) Special or additional service areas such as radiology, if required by the functional program, shall comply with the requirements of the General Hospital Rules, R432-100.

R432-13-5. General Construction.

(1) The administration and public areas which are not part of the Ambulatory Surgical Center exiting system, may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.

(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(3) An elevator shall be provided when an ambulatory surgical center is located on a level other than at grade. The minimum inside dimensions of the cab shall be at least 5'8" wide by 8'5" deep with a minimum clear door width of 3'8".

(4) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(5) The facility shall provide for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using procedures established by the Utah Department of Environmental Quality and the local health department having jurisdiction.

(6) All rooms shall be mechanically ventilated.

(7) Access to medical gas supply and storage areas shall be arranged to preclude travel through clean or sterile areas. There shall be space for enough reserve gas cylinders to complete at least one routine day's procedures.

(8) An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:

(a) life safety branch as defined in 517-32 of the National Electric Code NFPA 70, 1991 edition;

(b) critical branch as defined in 517-33 of the National Electric Code NFPA 70, 1991 edition;

(c) equipment system as defined in 517-34 of the National Electric Code NFPA 70, 1991 edition;

(9) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation shall be provided.

(10) Lighting shall comply with R432-4-23(20)(b).

R432-13-6. Extended Recovery Care Unit.

(1) A facility that provides extended recovery services shall maintain a patient care area that is distinct and separate from the post-anesthesia recovery area. The patient care area shall provide the following:

(a) a room or area that ensures patient privacy, including visual privacy;

(b) a minimum of 80 square feet of space for each patient bed with at least three feet between patient beds and between the sides of patient beds and adjacent walls.

(c) a nurse call system at each patient's bed and at the toilet, shower and bathrooms, which shall transmit a visual and auditory signal to a centrally staffed location which identifies the location of the patient summoning help;

(d) a patient bathroom with a lavatory and toilet;

(e) oxygen and suction equipment;

(f) medical and personal care equipment necessary to meet patient needs.

(2) A separate food nutrition area which shall include a counter, sink, refrigerator, heating/warming oven or microwave, and sufficient storage for food items.

R432-13-7. Exclusions to Guidelines.

The following sections of the Guidelines do not apply to Freestanding Surgical Center construction:

(1) Parking, Section 9.5.C.

(2) Waste Processing Systems, Section 9.2.G3.

R432-13-8. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-14. Birthing Center Construction Rule.
R432-14-1. Legal Authority.

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

R432-14-2. Purpose.

This rule provides construction and physical plant standards for birthing centers.

R432-14-3. General Design Requirements.

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of sections 9.2 and 9.7 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 1996-97 edition including Appendix A (Guidelines) and are adopted and incorporated by reference.

(2) Birthing Centers shall consist of at least two, but not more than five birthing rooms.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) To qualify for licensure, regardless of size, a Birthing Center shall be constructed in accordance with NFPA 101, Life Safety Code, Section 12-6, New Ambulatory Health Care Centers.

(5) Birthing Centers which are located within a building not constructed in accordance with NFPA 101, Life Safety Code, Section 12-6, shall be physically separated in accordance with requirements established by the local building official having jurisdiction and shall have at least two exits leading directly to the exterior of the building.

(6) Administration and public areas that are not part of the Birthing Center exiting system may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.

(7) A Birthing Center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the Birthing Center a written agreement for the shared services.

R432-14-4. General Construction Patient Facilities.

(1) Requirements of sections 9.2 and 9.7 of the Guidelines shall be met except as modified in this section.

(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) When used in this rule, "room or office" describes a specific separate, enclosed space for the service. When "room or office" is not used, multiple services may be accommodated in one enclosed space.

(4) The facility shall be designed to allow access to service areas and common areas without compromising patient privacy.

(5) Patient rooms and service areas shall be grouped to form a physically defined service unit.

(6) Spaces shall be provided for each of the required services.

(7) Interior finishes, lighting, and furnishings reflect a residential rather than an institutional setting.

(8) Maximum room occupancy shall be one mother and her newborn infant or infants.

(9) Each birthing room shall have a window in accordance with R432-4-23(7). Windows with a sight line which permits observation from the exterior shall be arranged or draped to ensure patient privacy.

(10) Patient rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(11) A toilet room with direct access from the birthing room shall be accessible to each birthing room.

(a) The toilet room shall contain a toilet, a lavatory, and a shower or tub.

(b) A toilet room may serve two patient rooms.

(c) All toilet room fixtures shall be handicapped accessible and shall have grab bars in compliance with ADAAG.

(d) Each birthing room shall be equipped with a lavatory for handwashing in addition to the lavatory in the toilet room. If the lavatory is equipped with wrist blades, it may be used for scrubbing.

(12) Newborn infant resuscitation facilities, remote from facilities serving the mother, including electrical outlets, oxygen, and suction shall be immediately available to each birthing room in addition to resuscitation equipment provided for the mother.

(13) A separate room for storage of maintenance materials and equipment shall be provided.

(a) The room may serve as a maintenance office with storage for maintenance files, facility drawings, and operation manuals.

(b) The storage room shall be in addition to the required janitors closet.

(14) Special surgical lighting is not required.

(15) An examination light shall be provided in each patient room. The light, if portable, shall be immediately accessible.

(16) An emergency electrical service is connected to an on-site emergency generator is required.

(a) Services shall be connected to the emergency generator to include:

(i) fire alarm system;

(ii) telephone;

(iii) nurse call;

(iv) one duplex convenience outlet in each patient room located to allow use of a portable examination light;

(v) one duplex convenience outlet at each nurse station;

(vi) heating system;

(vii) emergency lighting system.

(b) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation.

R432-14-5. Sections of the Guidelines which are Excluded.

The following sections of the Guidelines do not apply:

(1) Parking, Section 9.7A, subsection 9.7B.2., and subsection 9.7C.2.

(2) Radiology, Section 9.2.C.

(3) Laboratory, Section 9.2.D.

(4) General Purpose Examination Rooms, Subsection 9.2.B1.

(5) Special Purpose Examination Rooms, Subsection 9.2.B2.

(6) Treatment Rooms, Subsection 9.2.B3.

(7) Observation Rooms, Subsection 9.2.B4.

R432-14-6. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-16. Hospice Inpatient Facility Construction.
R432-16-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-16-2. Purpose.

The purpose of this rule is to promote quality of life in a home-like setting through the establishment and enforcement of construction standards for hospice inpatient facilities.

R432-16-3. Definitions.

(1) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or a licensed hospice unit in an existing health care facility.

(2) "Small Hospice Inpatient Facility" means a hospice facility capable of housing two to eight patients.

(3) "Large Hospice Inpatient Facility" means a hospice facility capable of housing nine or more patients.

R432-16-4. Hospice Unit.

(1) Each Hospice Unit is an area identified by the Licensee within a licensed health care facility and consists of at least two resident beds, resident care spaces, and service spaces.

(2) If licensed health care facilities share spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each health care facility served.

(3) A hospice inpatient facility operated in conjunction with another licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more health care facilities.

(4) Facility service areas shall be accessible from common areas without compromising resident privacy.

R432-16-5. General Design Requirements.

R432-4-1 through R432-4-22 apply with the following modifications.

(1) All public, common, and at least 10 percent of resident toilet rooms and bathrooms shall have fixtures that comply with Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993).

(2) These rooms shall be wheelchair accessible with wheelchair turning space within the rooms.

(3) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-16-6. Administrative Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) In large hospice inpatient facilities, an administrative office of sufficient size to store records and equipment.

(b) In small hospice inpatient facilities, an area may be designated for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings.

(3) A large hospice inpatient facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-16-7. Resident Rooms.

(1) Maximum room occupancy is two residents.

(2) Minimum room areas for new construction (exclusive of toilets, closets, lockers, wardrobes, alcoves or vestibules) shall be 120 square feet in single bed rooms and 100 square feet per bed in multiple-bed room. Existing buildings or spaces being licensed as a hospice shall have a minimum of 80 square feet of clear floor area per bed in multiple-bed areas and 100 square feet of clear floor area in single-bed rooms.

(3) In multiple-bed rooms, clearance shall allow for the movement of beds and equipment without disturbing residents. The dimensions and arrangement of rooms shall be such that there is a minimum of three feet clearance at least at one side, the foot, and between another bed.

(4) A nurse call system shall be provided. Each bed shall be provided with a call device. Two call devices serving adjacent beds may be served by one calling station. Calls in a large inpatient hospice facility shall also activate a visible signal in the corridor at the resident's door.

(5) A nurse emergency call device shall be provided at each inpatient toilet, bath, and shower room. The call device shall be accessible to a collapsed resident lying on the floor. Inclusion of a pull cord will satisfy this standard. The emergency call system shall be designed so that a signal activated at a resident's calling station will initiate a visible and audible signal distinct from the regular nurse call system and can be turned off only at the resident calling station. The signal shall activate an annunciator panel at the nurse station or other location appropriate to ensure immediate nurse notification. Emergency calls in a large hospice inpatient facility shall also activate a visible signal in the corridor at the resident's door.

(6) Each resident shall have access to a toilet room without having to enter the corridor area. One toilet room shall serve not more than four beds and no more than two resident rooms. The toilet room shall contain a water closet and a lavatory. The toilet room door shall swing outward.

(7) At least one single-bed room with a private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each eight beds, or fraction thereof, in a hospice facility.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or hand washing sink shall be provided in the patient room.

(b) Ventilation shall be in accordance with Table 6 of Section 8 of the Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 edition, which is adopted and incorporated by reference.

(8) Each resident room shall have a window that meets the requirements of R432-4-23(7).

(9) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned at 70 inches to hang full length garments.

(10) Visual privacy shall be provided for each resident in multiple-bed rooms. Design for privacy shall not restrict resident access to the toilet, lavatory, or room entrance.

R432-16-8. Service Requirements.

(1) A nurse station shall be provided and have space for charting, storage, medication security, and administrative activities.

(2) Toilet room(s) with hand washing facilities for staff shall be provided and may be unisex.

(3) Hand washing facilities shall be located immediately adjacent to the nursing station and the drug distribution station.

(4) Provisions shall be made for 24-hour distribution of medications by providing a medicine preparation room or a self-contained medicine dispensing unit. If a medical cart is used it shall be under visual control of staff.

(5) A clean workroom or clean holding room shall be provided for resident care items.

(a) The clean work room shall contain a counter, hand washing facilities and storage facilities.

(b) The work counter and hand washing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(6) A soiled workroom shall be provided.

(a) The soiled workroom shall contain a clinical sink, a sink equipped for hand washing, a work counter, waste receptacles, and a linen receptacle.

(b) Hand washing sinks, clinical sinks, and work counters may be omitted in rooms used only for temporary holding of soiled, bagged material.

(c) In small hospice inpatient facilities, accommodations shall be available for cleaning and sanitizing patient service items.

(7) Clean linen shall be stored in a separate closet or room. If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited. Clean linen may be stored in the clean work room or a clean holding room.

(8) Resident bathing facilities shall be provided in each hospice unit at a ratio of one bathing facility for each eight beds, or fraction thereof, not otherwise served by bathing facilities within individual resident rooms.

(a) Each resident bathtub or shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(b) A toilet and hand sink shall be provided at each common bathing area.

(9) An equipment storage room with a minimum area of five square feet for each licensed bed, but no less than 30 square feet, for portable equipment shall be provided.

(10) In small hospice inpatient facilities, accommodation shall be made for storage of portable equipment.

R432-16-9. Resident Support Areas.

(1) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents. The total area set aside for dining, resident lounges, and recreation area shall be at least 35 square feet per bed with a minimum total area of at least 225 square feet. At least 20 square feet per bed shall be available for dining.

(2) There shall be a general purpose room with a minimum area of 100 square feet. It shall accommodate family gatherings and shall be equipped with a table, comfortable chairs and incandescent lighting. In small hospice inpatient facilities, this room may be omitted if the required living area includes an enclosed lounge.

(3) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

R432-16-10. General Services.

(1) Large inpatient hospice facilities shall have linen services that comply with R432-4-24(3).

(2) Small inpatient hospice facilities shall have space and equipment to store and process clean and soiled linen as required for patient care.

(3) There shall be one housekeeping room for each hospice unit. There shall be an exhaust for this room that exhausts air to the outside.

(4) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-16-11. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) Storage area for food supplies, including a cold storage area for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) Food preparation area;

(c) An area to serve and distribute resident meals;

(d) An area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) A storage area for waste located next to an outside facility exit for direct pickup;

(f) An area for meal planning.

R432-16-12. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques required by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-16-13. Details and Finishes.

Details and finishes shall comply with the following:

(1) Corridor handrails shall be provided and shall comply with ADAAG.

(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(3) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADAAG.

(4) All partition and all floor and ceiling construction in resident areas shall comply with the noise reduction criteria of Table 1 for sound control.

(5) Floor materials shall be easily cleanable.

(6) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(7) In areas subject to frequent wet-cleaning, the floor materials shall be sealed to prevent contamination by germicidal cleaning solutions.

(8) Floors and wall bases of kitchens, toilet rooms, bath rooms, and housekeeping rooms shall be homogeneous or joints shall be tightly sealed. Bases shall be integrated with the floor and coved.

(9) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(10) Finish, trim, floor, and wall construction in food preparation areas shall be free of insect and rodent harboring spaces.

(11) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to prevent entry of pests.

(12) Carpet and padding shall be stretched taut and be free of loose edges.

(13) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be cleanable.

(14) Finished ceilings are not required in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire resistive purposes.

(15) Finished ceilings shall be provided in areas where dust fallout might occur.

TABLE 1

Sound Transmission Limitations
in Hospice Care Facilities

Class (IIC) (b) (Residents')	Airborne Sound Transmissions Class (STC)(a) Partitions	Floors
room to resident's room	35	40
Public space to (residents) room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-16-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Insulation containing any asbestos is prohibited.

(4) Air conditioning, heating, and ventilating systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(c) Evaporative coolers may not be used.

(d) Isolation rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. No air shall be recirculated into the building system.

(e) Supply and return systems must be within a duct. Common returns using corridor or attic spaces as return plenums are prohibited.

(f) Filtration shall be provided when mechanically circulated outside air is used.

(g) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other nonresident areas.

(5) Plumbing and other Piping Systems shall include:

(a) Hand washing facilities that are arranged to provide sufficient clearance for single-lever operating handles.

(b) Dishwashers, disposals and appliances that are National Sanitation Foundation (NSF) approved and have the NSF seal affixed.

(c) Kitchen grease trap location shall comply with local health department rules.

(d) Hot water provided in patient tubs, showers, whirlpools, and hand washing facilities shall be regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances. The temperature of hot water for patient fixtures shall range between 105 and 115 degrees Fahrenheit.

R432-16-15. Electric Standards.

(1) The Licensee shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Lighting Handbook 1987, Volume 2, Applications by Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) General lighting shall be provided as required in R432-150-33, Table 1.

R432-16-16. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
March 4, 1998 **26-21-5**
26-21-16

R432. Health, Health Systems Improvement, Licensing.
R432-30. Adjudicative Procedure.
R432-30-1. Purpose.

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

R432-30-2. Definitions.

(1) "Department" means the Utah Department of Health, Bureau of Licensing.

(2) "Initial agency determination" means a decision by department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63-46b-1(2).

(3) "Notice of agency action" means the formal notice meeting the requirements of Subsection 63-46b-(3)2 that the department issues to commence an adjudicative proceeding.

(4) "Request for agency action" means the formal written request meeting the requirements of Subsection 63-46b-3(3) that requests the department to commence an adjudicative proceeding.

R432-30-3. Commencement of Adjudicative Proceedings.

(1) All adjudicative proceedings under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and under R432, Health Facility Licensing Rules, are formal adjudicative proceedings.

(2) The Department may commence an adjudicative proceeding by filing and serving a notice of agency action in accordance with Subsection 63-46b-3(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.

(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements of a request for agency action under Subsection 63-46b-3(3) by completing the "Facility Licensing Request for Agency Action" form and filing the form with the department.

R432-30-4. Responses.

(1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.

(2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Section 63-46b-3(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.

(3) The written response shall:

(a) include the information specified in Subsection 63-46b-6(1);

(b) be signed by the respondent or the respondent's representative; and

(c) be filed with the Department during the time period specified in Subsection R432-30-4(1) or R432-30-4(2).

(4) The respondent shall send one copy of the response by certified mail to each party.

(5) A person who has filed a request for agency action and has received notice from the presiding officer under Section 63-46b-3(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.

(6) The presiding officer upon motion of a party or upon the presiding officer's own motion may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.

R432-30-5. Discovery.

(1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.

(2) The provisions of Rules 26, 27,28, 29. 30. 32.34.36. and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.

(a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.

(b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.

(c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.

(d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.

(e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.

(f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.

(g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to R432-30-6.

R432-30-6. Witnesses and Subpoenas.

(1) Each party is responsible for the presence of that party's witnesses at the hearing.

(2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:

(a) the officer may issue the subpoena upon a party's motion supported by affidavit showing sufficient need, or upon the officer's own motion;

(b) the party to whom the hearing officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served.

(c) every subpoena shall be issued by the presiding officer under the seal of the department, shall state the title of the action, and shall command every person to whom it is directed

to attend and give testimony at time and place therein specified.

(d) a supporting affidavit for a subpoena duces tecum for the production by a witness of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing shall include the following:

(i) the name and address of the entity upon whom the subpoena is to be served;

(ii) a description of what the party seeks to have the witness bring;

(iii) a showing of the materiality to the issue involved in the hearing;

(iv) a statement by the party that to the best of his knowledge the witness has such items in his possession or under his control.

R432-30-7. Certificate of Service.

There shall appear on all documents required to be served a certificate of service dated and signed by the party or his agent in substantially the following form:

I certify that I served the foregoing document upon all parties to this proceeding by delivering (or mailing postage prepaid and properly addressed, or causing to be delivered) a copy of it to (provide the name of the person).

R432-30-8. Stays and Temporary Remedy.

(1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.

(2) The presiding officer shall issue a written decision within ten working days of the filing date of the request. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the patients or residents.

(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.

(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.

R432-30-9. Declaratory Orders.

(1) Any person or agency may petition for a department declaratory ruling of rights, status, or legal relations under a specific statute or rule by following the procedure outlined in Rule R380-1.

(2) Any person or agency may petition for a department declaratory ruling on orders issued by the Bureau of Health Facility Licensure in areas where the Health Facility Committee has statutory authority to issue orders by following the procedures outlined in Rule R380-5.

KEY: health facilities

March 3, 1995	**26-21-5**
Notice of Continuation February 1, 2000	**26-21-14 through 26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-35. Background Screening.
R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult management information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
(5) Small Health Care facilities; and
(6) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of a criminal offense or has a substantiated report of child abuse or neglect or disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, and, for assisted living settings, all individuals residing in the home where an assisted living program is to be licensed, who are 18 years old and over.

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

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

(a) physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness; or
(f) chronic or severe neglect.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21-9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) The health care facility shall submit applicant information within ten days of initially hiring an individual, include fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Criminal Investigations and Technical Services Division for additional screening.

(c) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement agency or an agency approved by local law enforcement.

(d) The Criminal Investigations and Technical Services Division, shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

(e) If a covered individual applicant has not had residency in Utah for the last five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(f) If based upon the BCI screening, the Department denies the covered individual a license, volunteer position or employment, the Department shall send a Notice of Agency Action to the health care provider or covered individual stating that the application is denied.

(2) The Department shall make the following determination if a covered individual has a criminal history record:

(a) If the covered individual was convicted of a felony, the covered individual may not provide direct services to a patient or volunteer in a program licensed by the Department.

(b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide direct patient services or volunteer in a health care program licensed by the Department if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense.

(c) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where health care is provided, the Department shall not issue a license for health care in the home.

(3) The Executive Director may consider an approval for licensing or employment of a covered individual who has been convicted of a misdemeanor, but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, according to the following criteria:

(a) If the convictions are older than five years, the covered individual may provide direct patient care in a health care program licensed by the Department.

(b) If the convictions are within the last five years the Department shall request that the employee sign a waiver to disclose the convictions to the employer. The covered health care facility may request a variance to the rules to permit the individual to remain employed. If the covered health care facility does not submit a variance then the Department shall make a comprehensive review of the individual circumstances.

(i) If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children or elderly or disabled adults, the covered individual may provide direct patient care in a health care facility licensed by the Department.

(ii) If the convictions demonstrate a pattern of behavior which indicates that the covered individual's conduct is adverse to the public health, morals, welfare, and safety of children or elder and disabled adults, the covered individual may not provide direct patient care in a health care facility licensed by the Department.

(4) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the covered individual is denied a license or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the Criminal Investigations and Technical Services Division, as provided in Section 77-18-10.

(6) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

R432-35-5. Child, Elder, and Disabled Adult Abuse Management Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect, from the management information system maintained by the Utah Department of Human Services (DHS) for children and disabled or elder adults.

(2) If a covered individual appears on the management information system, the Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the child or disabled or elder adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the DHS. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation, the Department may hold the license or employment denial in abeyance until DHS renders a decision,.

(6) If the DHS determines a covered individual has a substantiated finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

KEY: health care facilities
September 22, 1999 26-21-9.5

R432. Health, Health Systems Improvement, Licensing.
R432-100. General Hospital Standards.
R432-100-1. Legal Authority.

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

R432-100-2. Purpose.

The purpose of this rule is to promote the public health and welfare through establishment and enforcement of the licensure standards. The rule sets standards for the construction and operation of a general hospital. The standards of patient care apply to inpatient, outpatient, and satellite services.

R432-100-3. Construction, Facilities, and Equipment Standards.

Hospitals shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

R432-100-4. Hospital Swing-Bed and Transitional Care Units.

Hospitals with designated swing bed units or transitional care units shall comply with this section.

(1) In addition to R432-100, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules: 150-4, 150-5, 150-11 through 150-17, 150-20, 150-22, and 150-24.

(2) Transitional Care Units shall be licensed as Nursing Care Facilities under a separate licensing category and shall conform to the requirements of R432-150, Nursing Care Facility Rules.

R432-100-5. Governing Body.

(1) Each licensed hospital shall have a governing body hereinafter called the board.

(2) The board shall be legally responsible for the conduct of the hospital. The board is also responsible for the appointment of the medical staff.

(3) The board shall be organized in accordance with the Articles of Incorporation or Bylaws.

(a) The Articles or Bylaws shall specify:

(i) the duties and responsibilities of the board;

(ii) the method for election or appointment to the board;

(iii) the size of the board;

(iv) the terms of office of the board;

(v) the methods for removal of board members and officers;

(vi) the duties and responsibilities of the officers and any standing committees;

(vii) the numbers or percentages of members that constitute a quorum for board meetings;

(viii) the board's functional organization, including any standing committees;

(ix) to whom responsibility for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated;

(x) the methods established by the board for holding such individuals responsible;

(xi) the mechanism for formal approval of the organization, bylaws, rules of the medical staff and hospital departments; and

(xii) the frequency of meetings.

(4) The board shall meet not less than quarterly, and shall keep written minutes of meetings and actions, and distribute copies to members of the board.

(5) The board shall employ a competent executive officer or administrator and vest this person with authority and responsibility for carrying out board policies. The administrator's qualifications, responsibilities, authority, and accountability shall be defined in writing.

(6) The board, through its officers, committees, medical and other staff, shall:

(a) develop and implement a long range plan;

(b) appoint members of the medical staff and delineate their clinical privileges;

(c) approve organization, bylaws, and rules of medical staff and hospital departments; and

(d) maintain a list of the scope and nature of all contracted services.

R432-100-6. Administrator.

(1) The administrator shall establish and maintain an organizational structure for the hospital indicating the authority and responsibility of various positions, departments, and services within the hospital.

(2) The administrator shall designate in writing a person to act in the administrator's absence.

(3) The administrator shall be the direct representative of the board in the management of the hospital.

(4) The administrator shall function as liaison between the board, the medical staff, the nursing staff, and departments of the hospital.

(5) The administrator shall advise the board in the formulation of hospital policies and procedures. The administrator shall review and revise policies and procedures to reflect current hospital practice.

(6) The administrator is responsible to see that hospital policies and procedures are implemented and followed.

(7) The administrator shall maintain a written record of all business transactions and patient services rendered in the hospital and submit reports as requested to the board.

(8) Patient billing practices shall comply with the requirements of 26-21-20 UCA.

(9) The administrator shall appoint a member of the staff to oversee compliance with the requirements of the Utah Anatomical Gift Act.

R432-100-7. Medical and Professional Staff.

(1) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the board.

(2) The medical and professional staff shall advise and be accountable to the board for the quality of medical care provided to patients.

(3) The medical and professional staff must adopt bylaws and policies and procedures to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:

(a) the appointment and re-appointment process;

(b) the necessary qualifications for membership;

(c) the delineation of privileges;

(d) the participation and documentation of continuing education; and

(e) a fair hearing and appeals process.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state.

(5) An applicant for staff membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws and must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license and abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

R432-100-8. Personnel Management Service.

(1) The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) There shall be written policies, procedures, and performance standards that include:

(a) job descriptions for each position or employee;

(b) periodic employee performance evaluations;

(c) employee health screening, including Tuberculosis testing in accordance with R386-702, The Communicable Disease Rule;

(d) policies to ensure that all employees receive unit specific training;

(e) policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;

(f) policies to ensure that all hospital direct care staff have current cardiopulmonary resuscitation certification; and

(g) policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce within 45 days of employment.

(4) A copy of the current certificate, license or registration shall be available for Department review.

(5) All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

(6) Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

(7) If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

R432-100-9. Quality Improvement Plan.

(1) The Board shall ensure that there is a well-defined quality improvement plan designed to improve patient care.

(2) The plan shall be consistent with the delivery of patient care.

(3) The plan shall be implemented and include a system for the collection of indicator data.

(a) The plan shall include an incident reporting system to identify problems, concerns, and opportunities for improvement of patient care.

(b) Incident reports shall be available for Department review.

(c) A system shall be implemented for assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to eliminate identified problems and improve patient care.

(5) Each hospital shall maintain a quality improvement committee. The quality improvement committee shall keep and make available for Department review written minutes documenting corrective actions and results.

(6) The quality improvement committee shall report findings and concerns at least quarterly to the board, the medical staff, and the administrator.

(7) Infection reporting shall be integrated into the quality improvement plan, and shall be reported to the Department in accordance with R386-702 Communicable Diseases.

R432-100-10. Infection Control.

Each hospital must implement a hospital-wide infection control program.

(1) The infection control program shall include at least the following:

(a) definitions of nosocomial infections;

(b) a system for reporting, evaluating, and investigating infections;

(c) review and evaluation of aseptic, isolation, and sanitation techniques;

(d) methods for isolation in relation to the medical condition involved;

(e) preventive, surveillance, and control procedures;

(f) laboratory services;

(g) an employee health program;

(h) orientation of all new employees; and

(i) documented in-service education for all departments and services relative to infection control.

(2) Infection control reporting data shall be incorporated into the hospital quality improvement process.

(3) There shall be written infection control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.

(4) There shall be written policies for the selection,

storage, handling, use, and disposition of disposable or reusable items. Single-use items may be reused according to hospital policy.

(a) Reusable items shall have specific policies and procedures for each type of reuse item.

(b) Reuse data shall be incorporated into the quality improvement process.

(c) Reuse data shall be incorporated in the hospital infection control identification and reporting process.

R432-100-11. Patient Rights.

(1) The facility shall inform each patient at the time of admission of patient rights and support the exercise of the patient's right to the following:

(a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) to reasonable access to care;

(d) to refuse treatment;

(e) to formulate an advanced directive in accordance with the Personal Choice and Living Will Act, UCA 75-2-1102 ;

(f) to uniform, considerate and respectful care;

(g) to participate in decision making involved in managing his health care with his physician, or to have a designated representative involved;

(h) to express complaints regarding the care received and to have those complaints resolved when possible;

(i) to refuse to participate in experimental treatment or research;

(j) to be examined and treated in surroundings designed to give visual and auditory privacy; and

(k) to be free from mental and physical abuse, and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a licensed practitioner for a specified and limited period of time or when necessary to protect the patient from injury to himself or others.

(2) The hospital shall establish a policy and inform patients and legal representatives regarding the withholding of resuscitative services and the forgoing or withdrawing of life sustaining treatment and care at the end of life. This policy shall be consistent with state law.

R432-100-12. Nursing Care Services.

(1) There shall be an organized nursing department that is integrated with other departments and services.

(a) The chief nursing officer of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.

(b) Nursing policies and procedures, nursing standards of patient care, and standards of nursing practice shall be approved by the chief nursing officer.

(c) A registered nurse shall be designated and authorized to act in the chief nursing officer's absence.

(d) Nursing tasks may be delegated pursuant to R156-31-603, Delegation of Nursing Tasks.

(2) Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse. The nursing department shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.

(3) Nursing care shall be documented for each patient from admission through discharge.

(a) A registered nurse shall be responsible to document each patient's nursing care and coordinate the provision of interdisciplinary care.

(b) Nursing care documentation shall include the assessments of patient's needs, clinical diagnoses, intervention identified to meet the patient's needs, nursing care provided and the patients response, the outcome of the care provided, and the ability of the patient, family, or designated caregiver in managing the continued care after discharge.

(c) Patients shall receive prior to discharge written instructions for any follow-up care or treatment.

R432-100-13. Critical Care Unit.

(1) Hospitals that provide critical care units shall comply with the requirements of R432-100-13. Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the board.

(2) Critical care unit nursing direction shall be provided by a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. The registered nurse manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.

(3) Each critical care unit shall be designed and equipped to facilitate the safe and effective care of the patient population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance with the needs of the patients.

(4) An emergency cart must be readily available to the unit and contain appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

(5) The following support services shall be immediately available to the critical care unit on a 24-hour basis:

(a) blood bank or supply;

(b) clinical laboratory; and

(c) radiology services.

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-8, Required Staffing; and R432-650-13, Water Quality.

R432-100-14. Surgical Services.

(1) Surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

(a) Administrative direction of surgical services shall be provided by a person appointed and authorized by the administrator.

(b) Medical direction of surgical services shall be provided by a member of the medical staff.

(c) Qualified registered nurses shall supervise the provision of surgical nursing care.

(d) The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

(i) assuring that the planned procedure is within the scope of privileges granted to the physician.

(ii) maintaining the operating room register; and

(iii) other administrative functions, including serving on patient care committees.

(e) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

(f) Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.

(g) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

(h) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

(2) A safe operating room environment shall be established, controlled and consistently monitored.

(a) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(b) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(c) There shall be a scavenging system for evacuation of anesthetic waste gases.

(d) The following equipment shall be available to the operating suite:

(i) a call-in system;

(ii) a cardiac monitor;

(iii) a ventilation support system;

(iv) a defibrillator;

(v) an aspirator; and

(vi) equipment for cardiopulmonary resuscitation.

(3) The administration of anesthetics shall conform to the requirements of Anesthesia Services, R432-100-15.

(4) Removal of surgical specimens shall conform with the requirements of Laboratory and Pathology Services, R432-100-22.

R432-100-15. Anesthesia Services.

(1) There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care shall be available on a 24-hour basis.

(a) Administrative direction of anesthesia services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of anesthesia services shall be provided by a member of the medical staff.

(c) Anesthesia care shall be provided by anesthesiologists, other qualified physicians, dentists, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(ii) The responsibilities and privileges of the person administering anesthesia shall be clearly defined by the medical staff.

(iii) Both the patient and the operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(iv) Medicaid certified hospitals shall comply with the requirements of 42 CFR 482.52(a), Subpart D, Anesthesia Services.

(2) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(3) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with hospital policy.

R432-100-16. Emergency Care Service.

(1) Each hospital shall evaluate and classify itself to indicate its capability in providing emergency care.

(a) Level I offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There shall be in-hospital support by members of the medical staff for at least medical, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation shall be available within 30 minutes, or two-way voice communication is available for the initial consultation.

(b) Level II offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation available within 30 minutes by members of the medical staff.

(c) Level III offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation shall be available by request of the attending medical staff member by transfer to a level I or level II hospital where care can be provided.

(d) Level IV offers emergency first aid treatment to patients, staff, and visitors; and to persons who may be unaware

of, or unable to immediately reach services in other facilities.

(2) The emergency service shall be organized and staffed by qualified individuals based on the defined capability of the hospital.

(a) Administrative direction of emergency services shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction of emergency services shall be defined in writing and provided by one or more members of the medical staff. The medical staff shall provide back-up and on-call coverage for emergency services and as needed for emergency speciality services.

(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a licensed practitioner.

(d) The priority by which persons seeking emergency care are seen by a physician may be determined by trained personnel using guidelines established by the emergency room director and approved by the medical staff.

(e) Rosters designating medical staff members on duty or on call for primary coverage and specialty consultation shall be posted in the emergency care area.

(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.

(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.

(ii) Level I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification, and sufficient number of other nursing staff assigned and on duty within the emergency care area.

(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.

(g) The emergency service shall be integrated with other departments in the hospital.

(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available. A supply of blood shall be available at all times.

(ii) Diagnostic radiology services shall be available at all times.

(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.

(3) Each hospital shall define its scope of emergency services in writing and implement a plan for emergency care, based on community need and on the capability of the hospital.

(a) Each hospital shall comply with federal anti-dumping regulations as defined in CFR 489.20 and 489.24.

(b) The role of the emergency service in the hospital's disaster plans shall be defined.

(c) Each hospital must have a communication system that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.

(d) Emergency department policies and protocols shall address the care, security, and control of prisoners or people to be detained for police or protective custody.

(e) Emergency department policies and protocols shall address the provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient.

(f) Emergency department policies and procedures shall address the evaluation and handling of alleged or suspected child or adult abuse cases. Criteria shall be developed to alert emergency department and service personnel to possible child or adult abuse. The criteria shall address:

(i) suspected physical assault;

(ii) suspected rape or sexual molestation;

(iii) suspected domestic abuse of elders, spouses, partners and children;

(iv) the collection, retention, and safeguarding of specimens, photographs, and other evidentiary materials; and

(v) visual and auditory privacy during examination and consultation of patients.

(g) A list shall be available in the emergency department of private and public community agencies and resources that provide, arrange, evaluate and care for the victims of abuse.

(h) Emergency department policies and procedures shall address the handling of hazardous materials and contaminated patients.

(i) Emergency department policies and procedures shall address the reporting of persons dead-on-arrival to the proper authorities including the legal requirements for the collection and preservation of evidence.

(4) The hospital shall in a timely manner make reasonable effort to contact the guardian, parents, or next of kin of any unaccompanied minor, or any unaccompanied unconscious patient admitted to the emergency department.

R432-100-17. Perinatal Services.

(1) Each hospital shall comply with the requirements of this section.

(a) Administrative direction of perinatal services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction for perinatal services shall be provided by a qualified member of the medical staff.

(c) Each hospital shall establish and implement security protocols for perinatal patients.

(d) A qualified registered nurse shall be immediately available.

(2) The perinatal department shall include facilities and equipment for labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted according to hospital policy.

(3) Each hospital shall have access to at least one surgical suite for operative delivery.

(a) Equipment and supplies shall be maintained for the mother and newborn, including:

(i) furnishings suitable for labor, birth, and recovery;

(ii) oxygen with flow meters and masks or equivalent;

(iii) mechanical suction and bulb suction immediately available;

(iv) resuscitation equipment;

(v) emergency medications, intravenous fluids, and related supplies and equipment;

(vi) a device to assess fetal heart rate;

(vii) equipment to monitor and maintain the optimum body temperature of the newborn;

(viii) a clock capable of showing seconds;

(ix) an adjustable examination light; and

(x) a warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit must be capable of administering oxygen and suctioning.

(b) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-17(3(a).

(5) Each hospital shall comply with the following provisions:

(a) No attempt shall be made to delay the imminent, normal birth of a child.

(b) A prophylactic solution approved by the Department of Health shall be instilled in the eyes of the infant within three hours of birth in accordance with R386-702-9.

(c) Metabolic screening shall be performed in accordance with State Health Laboratory rules developed pursuant to Section 26-10-6.

(6) Each hospital shall designate its capability to provide nursery care in accordance with the following levels of nursery care as described in the Guidelines for Perinatal Care, Fourth Edition and The Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992 - 1993 Edition.

(a) Level I Basic: Full Term or Well Baby Nursery;

(b) Level II Specialty: Continuous Care Nursery;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery.

(7) The nursery area shall provide each infant with separate equipment and supplies for bathing, dressing, and handling.

(a) There shall be equipment and supplies in or near the nursery that include:

(i) an individual bassinet for each infant;

(ii) accurate scales; and

(iii) a reliable wall thermometer.

(b) Temperatures between 70-80 degrees F. shall be maintained in the nursery.

(c) There shall be an individual thermometer, or one with disposable tips, for each infant.

(d) A supply of medication shall be immediately available for emergencies.

(e) The following equipment and supplies shall be available:

(i) a covered soiled-diaper container with removable lining;

(ii) a linen hamper with removable bag for soiled linen other than diapers;

(iii) a warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(iv) oxygen, oxygen equipment, and suction equipment; and

(v) an oxygen concentration monitoring device.

(f) Infant formula storage space shall be available that conforms to the manufacturer's recommendations.

(g) Only single-use bottles shall be used for newborn feeding.

(8) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) has a communicable disease;

(ii) is delivered of an ill mother infected with a communicable disease;

(iii) is readmitted after discharge from a hospital; or

(iv) is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

R432-100-18. Pediatric Services.

(1) If the hospital provides pediatric services, those services shall be under the direction of a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff.

(a) A pediatrics qualified registered nurse must supervise nursing care and must supervise the documentation of the implementation of pediatric patient care on an interdisciplinary plan of care.

(b) If the hospital provides a pediatric unit, it shall have an interdisciplinary committee responsible for policy development and review of practice within the unit. This committee must include representatives from administration, the medical and nursing staff, and rehabilitative support staff.

(c) Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

(d) The hospital shall assess all pediatric patients for maturity and development. Information obtained from the maturity and development assessment must be incorporated into the plan of care.

(e) The hospital shall establish and implement security protocols for pediatric patients.

(f) The hospital shall provide a safe area for diversional play activities.

(2) Hospitals admitting pediatric patients shall have equipment and supplies in accordance with the hospital's scope of pediatric services.

(3) The hospital shall have written guidelines for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital. The guidelines shall address the use of cribs, bassinets, or beds; including the proper use of restraints, bed rails, and other safety devices.

(a) The hospital shall place infant patients in beds where frequent observation is possible.

(b) Pediatric patients other than infants shall be placed in

beds to allow frequent observation according to each patient's assessed care needs.

(4) Personnel working with pediatric patients shall have specific training and experience relating to the care of pediatric patients.

(5) Orientation and inservice training for pediatric care staff shall include pediatric specific training on drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, child abuse and neglect, and other topics according to the needs of the pediatric patients.

R432-100-19. Respiratory Care Services.

(1) Administrative direction of respiratory care services shall be provided by a person authorized by the hospital administrator.

(2) The respiratory care service shall be under the medical direction of a member of the medical staff who has the responsibility and authority for the overall direction of respiratory care services.

(a) When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

(b) The technical director shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

(3) Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible licensed practitioner which specifies the type, frequency, and duration of the treatment; and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

(a) The hospital must have equipment to perform any pulmonary function study or blood-gas analysis provided by the hospital.

(b) Resuscitation, ventilatory, and oxygenation support equipment shall be available in accordance with the needs of the patient population served.

R432-100-20. Rehabilitation Therapy Services.

(1) If rehabilitation therapy services are provided by the hospital, the services may include physical therapy, speech therapy, and occupational therapy.

(a) Rehabilitation therapy services shall be directed by a qualified, licensed provider who shall have clinical responsibility for the specific therapy service.

(b) Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

(c) Rehabilitation therapy services may be initiated by a member of the medical staff or by a licensed rehabilitation therapist.

(i) A physician's written request for services must include reference to the diagnosis or problems for which treatment is planned, and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

(2) Rehabilitation therapy services provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

R432-100-21. Radiology Services.

(1) Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.

(a) Administrative direction of radiology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of the department shall be provided by a member of the medical staff.

(i) If a radiologist is not the medical director of the radiology services, the services of a radiologist shall be retained on a part-time basis.

(ii) If a radiologist provides services on less than a full-time basis, the time commitment shall allow the radiologist to complete the necessary functions to meet the radiological needs of the patients and the medical staff.

(c) The radiologist is responsible to:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique; and

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

(d) At least one licensed radiologic technologist shall be on duty or available when needed.

(e) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

(f) If radiation oncology services are provided, the following applies:

(i) Physicians and staff who provide radiation oncology services have delineated privileges;

(ii) The medical director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

(2) Radiologic patient records shall be integrated with the hospital patient record.

(a) All requests for radiologic services shall contain the reasons for the examinations.

(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. Radiological film shall be retained in accordance with hospital policy.

(c) If requested by the attending physician and if the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.

(d) Radiotherapy summaries shall be filed in the patient's medical record. A copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.

R432-100-22. Laboratory and Pathology Services.

(1) Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.

(a) Administrative direction of laboratory and pathology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of laboratory and pathology services shall be provided by a member of the medical staff.

(2) Laboratory and pathology services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

(3) Laboratories certified by a Health Care Financing Administration (HCFA) approved accrediting agency are determined to be in compliance with this section. Accrediting agency inspection reports shall be available for Department review.

R432-100-23. Blood Services.

(1) Hospital blood services are defined as follows:

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that stores, determines compatibility, transfuses blood and blood components, and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) The hospital blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions, or have an up-to-date list of donors, equipment and trained personnel to draw and process blood.

(a) Blood or blood components must be collected, stored, and handled in such manner that they retain potency and safety.

(b) Blood or blood components must be properly processed, tested, and labeled.

(3) If the hospital operates a donor center, transfusion service or a blood bank the donor center, transfusion service, or blood bank must be accredited.

(a) Hospital blood banks and donor centers must be accredited by the Food and Drug Administration (FDA).

(b) Hospital transfusion services must be certified by the Health Care Financing Administration to meet Clinical Laboratory Improvement Amendments of 1988 (CLIA), or any accrediting organization approved by the Health Care Financing Administration.

(4) Results of the accrediting organization survey, or current CLIA certification must be available for Department review.

R432-100-24. Pharmacy Services.

(1) The pharmacy of a hospital currently accredited and conforming to the standards of JCAHO shall be determined to be in compliance with these rules.

(a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(b) The pharmacy department and service shall be directed by a licensed pharmacist.

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for access to emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.

(2) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(a) All floor-stocks shall be kept in secure areas in the patient care units.

(b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.

(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.

(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.

(a) There shall be a recorded and signed floor-stock controlled substance count once per shift.

(b) Hospitals that utilize automated dispensing technology must implement a system for accounting of controlled substances dispensed by the automated dispensing system.

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff.

(a) Drugs that are provided to floor units shall be administered in accordance with hospital policies and procedures.

(b) The medical staff in conjunction with the pharmacist shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the emergency department.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures including notification of the practitioner who ordered the drug.

R432-100-25. Social Services.

(1) In a hospital with an organized social services department, a qualified social worker shall direct the provision of social work services. If a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The social worker, or designee shall be knowledgeable about community agencies, institutions, and other resources.

(2) In a hospital without an organized social services department, the hospital shall obtain consultation from a qualified social worker to provide social work services.

(3) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, home health, and hospice services.

(4) Social Services shall be integrated with other departments and services of the hospital.

R432-100-26. Psychiatric Services.

(1) If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

(a) If the hospital does not provide psychiatric services, the hospital must have procedures to transfer patients to a facility that can provide the necessary psychiatric services.

(b) Administrative direction of psychiatric services shall be provided by a person appointed and authorized by the hospital administrator.

(c) Medical direction of psychiatric services shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(d) Psychiatric services shall comply with the following sections of R432-101, Specialty Hospitals, Psychiatric:

(i) R432-101-13 Patient Security;

(ii) R432-101-14 Special Treatment Procedures;

(iii) R432-101-17 Admission and Discharge;

(iv) R432-101-20 Inpatient Services;

(v) R432-101-21 Adolescent or Child Treatment Programs;

(vi) R432-101-22 Residential Treatment Services;

(vii) R432-101-23 Physical Restraints, Seclusion, and Behavior Management;

(viii) R432-101-24 Involuntary Medication Administration; and

(ix) R432-101-34 Partial Hospitalization Services.

(2) If outreach services are ordered by a physician as part of the plan of care or hospital discharge plan, the outreach services may be provided in a clinic, physician's office, or the patient's home.

R432-100-27. Substance Abuse Rehabilitation Services.

(1) A hospital may provide inpatient or outpatient substance abuse rehabilitation services. A hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients or clients.

(a) Administrative direction shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(c) Nursing services shall be under the direction of a full-time registered nurse.

(d) Substance abuse counseling shall be under the direction of a licensed mental health therapist.

(e) A licensed substance abuse counselor may serve as the primary therapist under the direction of an individual licensed under the Mental Health Practice Act.

(f) An interdisciplinary team including the physician, registered nurse, licensed mental health therapist, and substance abuse counselor shall be responsible for program and treatment services. The patient or client may be included as a member of the interdisciplinary team.

(2) Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification care shall be available for the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling shall be available in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provisions for educational, employment, or other counseling as needed.

(c) Treatment services shall be coordinated with other hospital and community services to assure continuity of care through discharge planning and aftercare referrals. Counselors may refer patients or clients to public or private agencies for substance abuse rehabilitation, and employment and educational counseling.

(d) A comprehensive assessment shall be documented that includes at least a physical examination, a psychiatric and psychosocial assessment, and a social assessment.

(3) The confidentiality of medical records of substance abuse patients and clients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(4) Residential treatment services may be provided under the direction of the medical director or his designee. Residential treatment services shall comply with R432-101-22.

R432-100-28. Outpatient Services.

(1) Outpatient care services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

(2) Outpatient care shall meet the same standards of care that apply to inpatient care.

(3) Outpatient care includes hospital owned outpatient

services, and hospital satellite services.

R432-100-29. Respite Services.

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) a Level 1 Pre-admission Screening upon the person's admission for respite services; and

(b) a service agreement which will 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.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) a service agreement;

(b) demographic information and patient identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the patient in service;

(f) accident and injury reports; and

(g) a post-service summary.

(9) If a patient has an advanced directive, the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-33.

(11) The hospital shall provide for confidentiality and release of information in accordance with R432-100-33.

R432-100-30. Pet Therapy.

(1) If a hospital utilizes pet therapy, household pets such as dogs, cats, birds, fish, and hamsters may be permitted.

(a) Pets must be clean and disease free.

(b) The immediate environment of the pets must be clean.

(c) Small pets shall be kept in appropriate enclosures.

(d) Pets that are not confined shall be kept under leash control or voice control.

(e) Pets that are kept at the hospital, or are frequent visitors shall have current vaccinations, including rabies, as recommended by a licensed veterinarian.

(f) Hospitals with birds shall have procedures in place which protect patients, staff, and visitors from psittacosis.

(2) Hospitals that permit pets to remain overnight shall have policies and procedures for the care, housing and feeding of such pets; and for the proper storage of pet food and supplies.

(3) Pets shall not be permitted in any area where their presence would create a significant health or safety hazard or nuisance to others.

(4) Pets shall not be permitted in food preparation and storage areas.

(5) Persons caring for pets shall not have patient care or food handling responsibilities.

R432-100-31. Dietary Service.

(1) There shall be an organized dietary department under the supervision of a certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(a) Direction of the dietary service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(b) If the services of a certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(c) There shall be food service personnel to perform all necessary functions.

(2) If dietetic services are provided by an outside provider, the outside provider shall comply with the standards of this section.

(3) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(a) The food and nutritional needs of patients shall be met in accordance with the physician's orders.

(b) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(c) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be

provided for use in preparation of no sodium meals, snacks, and beverages.

(4) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Rule R392-100.

(a) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(b) Traffic of unauthorized individuals through food preparation areas shall be controlled.

(5) Written reports of inspections by state or local health departments shall be on file at the hospital and available for Department review.

(6) The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

(7) Diets shall be ordered by a member of the medical staff and transmitted in writing to the dietary department.

R432-100-32. Telemedicine Services.

If a hospital participates in telemedicine, it shall develop and implement policies governing the practice of telemedicine in accordance with the scope and practice of the hospital.

(1) The policies shall address security, access and retention of telemetric data.

(2) The policies shall define the privileging of physicians and allied health professionals who participate in telemedicine.

R432-100-33. Medical Records.

(1) The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Records Administrator (RRA) or an Accredited Records Technician (ART) through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.

(a) The authentication may include written signatures, computer key, or other methods approved by the governing body and medical staff to identify the name and discipline of the person making the entry.

(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated as stated in hospital policy.

(4) Patient records shall be organized according to hospital policy.

(a) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

(b) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

(c) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

(d) Medical records may be destroyed after being retained the minimum length of time, according to hospital policy. Prior to destruction of the record, the following information shall be extracted and retained:

(i) patient name, medical record number, next of kin, date of birth, admission and discharge date(s); and,

(ii) the name of attending physician(s), admitting and discharge diagnoses, surgical procedures(s) and pathological and diagnostic findings.

(e) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-100-33(4)(c). The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical records to the attending physician if the physician is still in the community.

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and next of kin.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person has initiated an advanced directive as defined in the Personal Choice and Living Will Act, UCA 75-2-1102.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) Medical records of deceased patients shall contain a completed Inquiry of Anatomical Gift form or a modified hospital death form which has been approved by the Utah Department of Health as required by Section 26-28-6, UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain the following documentation in addition to the requirements for obstetrical medical records:

(i) Documentation must include a copy of the mother's delivery room record. In adoption cases where the identity of the mother is confidential, inclusion and access to the mother's delivery room record shall be according to hospital policy.

(ii) Documentation must include the date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools.

(iii) Documentation must include a record of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, and the identification number of the newborn screening kit, referred to in R398-1.

(iv) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority. and

(v) Documentation of the record and results of the newborn hearing screening according to Section 26-10-6, UCA and R398-2-6.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

R432-100-34. Central Supply Services.

(1) The central supply service supervisor shall be qualified for the position by education, training, and experience.

(2) The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.

(a) A hospital central service area shall provide for the following:

(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;

(ii) A linen assembly or pack-making area which shall have ventilation to control lint. The linen assembly or pack-making area shall be separated from the general sterilization and processing area.

(iii) The sterilization area shall contain hospital sterilizers with approved controls and safety features.

(b) The accuracy of the sterilizers' performance shall be checked by a method that includes a permanent record of each run.

(c) Sterilizers shall be tested by biological monitors at

least weekly.

(d) If gas sterilizers are used, they shall be inspected, maintained, and operated in accordance with the manufacturer's recommendations.

(3) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls, and shall be free of excessive moisture and dust. Outside shipping cartons shall not be stored in this area.

(4) During each shift that the central service area is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.

(5) All apparel worn in central supply shall be issued and laundered according to hospital policy.

R432-100-35. Laundry Service.

(1) Direction of the laundry service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator.

(2) Hospitals using commercial linen services shall require written assurance from the commercial service that standards in this subsection are maintained.

(a) Clean linen shall be completely packaged and protected from contamination until received by the hospital.

(b) The use of a commercial linen service does not relieve the hospital from its quality improvement responsibilities.

(3) Hospitals that maintain an in-house laundry service must have equipment, supplies and staff available to meet the needs of the patients.

(a) Soiled linen shall be collected in a manner to minimize cross-contamination. Containers shall be properly closed as filled and before further transport.

(i) Soiled linen shall be sorted only in a sorting area.

(ii) Handwashing is required after handling soiled linen and prior to handling clean items.

(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.

(iv) Soiled linen shall be transported separately from clean linen.

(b) The hospital shall maintain a supply of clean linen.

(i) Clean linen shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(ii) Clean linen shall be stored in enclosed closet areas or carts.

(iii) Clean linen shall be covered during transport.

(4) The hospital is responsible to launder employee scrubs that are worn in the following areas:

(a) surgical areas;

(b) other areas as required by the Occupational Health and Safety Act.

(5) If hospital employee scrubs are designated as uniforms that may be worn to and from work, policies and procedures shall be developed and implemented defining the scope and usage of scrubs as uniforms including hospital storage of employee scrubs, and provisions for hospital-provided scrubs in case of contamination.

R432-100-36. Housekeeping Services.

(1) There shall be housekeeping services to maintain a clean, safe, sanitary, and healthful environment in the hospital.

(2) If the hospital contracts for housekeeping services with an outside service, there shall be a signed and dated agreement that details the services provided.

(3) The hospital shall provide safe, secure storage of cleaners and chemicals. Cleaners and chemicals stored in areas that may be accessible to patients shall be kept secure in accordance with hospital policy.

(4) Storage and supplies in all areas of the hospital shall be stored at least four inches off the floor, and at least 18 inches below the lowest portion of the sprinkler system.

(5) Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.

(6) If personnel work in food or direct patient care services, hospital policy shall be established and followed to govern the transition from housekeeping services to patient care.

R432-100-37. Maintenance Services.

(1) There shall be maintenance services to ensure that hospital 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 patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of hospital maintenance.

(b) If the hospital contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

(c) A pest-control program shall be conducted to ensure the hospital is free from vermin and rodents.

(d) Entrances, exits, steps, ramps, and outside walkways shall be maintained in a safe condition with regard to snow, ice and other hazards.

(2) All patient care equipment shall be tested, calibrated and maintained in accordance with the specifications from the manufacturer.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Testing or calibration procedures conducted by an outside agency or service shall be documented and available for Department review.

(3) Hot water at public and patient faucets shall be delivered between 105 to 120 degrees Fahrenheit.

R432-100-38. Emergency and Disaster Plan.

(1) The hospital is responsible to assure the safety and well-being of patients. There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption such as gas, water, sewer, fuel or electricity interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator or designee is responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters. This plan shall be in writing and list the coordinating authorities by agency name and title. The plan shall be distributed or made available to all hospital staff to assure

prompt and efficient implementation.

(a) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(b) The administrator or designee is in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(c) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems shall be readily available to all hospital staff.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency; and

(e) maintenance of safe ambient air temperatures within the hospital.

(4) The hospital shall have an emergency plan that is current and appropriate to the operation and construction of the hospital. The plan shall be approved by the board and the hospital administrator.

(a) The hospital'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) the telephone numbers of individuals to be notified in an emergency in order of priority;

(vi) methods of transporting and evacuating patients and staff to other locations; and

(vii) conversion of the hospital for emergency use.

(b) Emergency telephone numbers shall be accessible to staff at each nurses station.

(c) The hospital shall document emergency events and responses and record patients and staff evacuated from the hospital to another location. Any emergency involving patients shall be documented in the patient record.

(d) Simulated disaster drills shall be held semiannually for all staff.

(e) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

(5) There shall be a fire emergency evacuation plan written in consultation with qualified fire safety personnel. The evacuation plan shall be posted in prominent locations throughout the hospital.

R432-100-39. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

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	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-101. Specialty Hospital - Psychiatric.
R432-101-1. Legal Authority.

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

R432-101-2. Purpose.

This rule applies to a hospital that chooses to be licensed as a specialty hospital and where its major single service is psychiatric service. If a specialty hospital chooses to have a dual service, e.g., psychiatric and substance abuse or chemical dependency, then both of the appropriate specialty hospital rules apply.

R432-101-3. Time for Compliance.

All psychiatric specialty hospitals obtaining initial licensure shall fully comply with this rule.

R432-101-4. Definitions.

(1) See Common Definitions in R432-1-3.

(2) Special Definitions.

(a) "Specialty Hospital" means a facility with the following:

(i) a duly constituted governing body with overall administrative and professional responsibility;

(ii) an organized medical staff which provides 24 hour inpatient care;

(iii) a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;

(iv) a distinct nursing unit of at least six inpatient beds;

(v) current and complete medical records;

(vi) provide continuous registered nursing supervision and other nursing services;

(vii) provide in house the following basic services:

(A) laboratory;

(B) pharmacy;

(C) emergency services and provision for interim care of traumatized patients coordinated with an appropriate emergency transportation service;

(D) specialized diagnostic and therapeutic facilities, medical staff, and equipment required to provide the type of care in the recognized specialty or specialties for which the hospital is organized.

(viii) provide on-site all basic services required of a general hospital that are needed for the diagnosis, therapy and treatment offered or required by patients admitted to or cared for in the specialty facility;

(b) "Investigational Drug" means a drug that is being investigated for human or animal use by the manufacturer or the Food and Drug Administration (FDA); a drug which has not been approved for use by the FDA;

(c) A "physical restraint" means an involuntary intervention employing any device intended to control or restrict the physical movement of a patient, whether applied directly to the patient's body or applied indirectly to act as a barrier to voluntary movement. Simple safety devices are a type of physical restraint.

(d) "Seclusion" means an involuntary intervention employing a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(e) "Secure hospital" means a hospital where traffic in and out of the hospital setting is controlled in order to maintain safety for both patients and the community.

(f) "Stable" means a patient is no longer a danger to himself or others, and is able to function and demonstrate the ability to maintain improvements outside the hospital setting.

(g) "Time out" means isolating a patient for a period of time, on a voluntary basis in an unlocked room. This shall be based on hospital policy, as a procedure designed to remove the patient who is exhibiting a specified behavior from the source of stimulation or reinforcement.

(h) "Activity services" means therapies which involve the principles of art, dance, movement, music, occupational therapy, recreational therapy and other disciplines.

(i) "Plan for Patient Care Services" means a written plan which ensures the care, treatment, rehabilitation, and habilitation services provided are appropriate to the needs of the patient population served and the severity of the disease, condition, impairment, or disability.

(j) "Partial Hospitalization" means a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated and structured clinical services where the daily stay lasts no more than 23 hours with the goal of stabilizing the patient to avert inpatient hospitalization or of reducing the length of a hospital stay.

R432-101-5. Licensure.

License required. See R432-2.

R432-101-6. General Construction Rules.

See R432-7, Psychiatric Construction Rule.

R432-101-7. Organization.

(1) The Governing Body, R432-100-5 applies.

(2) The governing body shall develop through its officers, committees, medical and other staff, a mission statement that includes a Plan for Patient Care Services.

R432-101-8. Administrator.

(1) Refer to R432-100-6.

(2) The administrator shall organize and staff the hospital according to the nature, scope and extent of services offered.

R432-101-9. Professional Staff.

(1) The psychiatric services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.

(2) Medical and professional staff standards shall comply with R432-100-7. The medical direction of the psychiatric care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff, appointed by the governing body and certified or eligible for certification by the American Board of Psychiatry and Neurology.

(3) Nursing staff standards shall comply with R432-100-12.

(4) The hospital shall provide sufficient qualified, and competent, health care professional and support staff to assess

and address patient needs within the Plan for Patient Care Services.

(5) Qualified professional staff members may be employed on a full-time, on a part-time basis or be retained by contract.

(6) Professional staff shall be assigned or assume specific responsibilities on the treatment team as qualified by training and educational experience and as permitted by hospital policy and the scope of the professional license.

R432-101-10. Personnel Management Service.

(1) The hospital shall provide licensed, certified or registered personnel who are able and competent to perform their respective duties, services, and functions.

(2) Written personnel policies and procedures shall include:

(a) job descriptions for each position, including job title, job summary, responsibilities, minimum qualifications, required skills and licenses, and physical requirements;

(b) a method to handle and resolve grievances from the staff.

(3) All personnel shall have access to hospital policy and procedure manuals, a copy of their position description, and other information necessary to effectively perform duties and carry out responsibilities.

(a) The facility shall conduct a criminal background check with the Department of Public Safety for all employees prior to beginning employment.

(b) The facility is responsible for the security and confidentiality of all information obtained in the criminal background check.

(4) All employees shall be oriented to job requirements and personnel policies, and be provided job training beginning the first day of employment. Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first 30 days of employment.

(a) Registered nurses, licensed practical nurses and psychiatric technologists shall receive additional orientation to the following:

(i) concepts of treatment provided within the hospital;

(ii) roles and functions of nurses in the treatment programs;

(iii) psychotropic medications.

(b) In-service sessions shall be planned and held at least quarterly and be available to all employees. Attendance standards shall be established by policy.

(c) Licensed professional staff shall receive continuing education to keep informed of significant new developments and to be able to develop new skills.

(d) The following in-service staff development topics shall be addressed annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) prevention and control of infections;

(iv) training in the principles of emergency medical care and cardiopulmonary resuscitation for physicians, licensed nursing personnel, and others as appropriate;

(v) proper use and documentation of restraints and seclusion;

(vi) patients' rights, refer to R432-101-15;

(vii) confidentiality of patient information;

(viii) reporting abuse, neglect or exploitation of adults or children; and

(ix) provision of care appropriate to the age of the patient population served.

(5) Volunteers may be utilized in the daily activities of the hospital but shall not be included in the hospital's staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened by the administrator or designee and supervised according to hospital policy.

(b) Volunteers shall be familiar with the hospital's policies and procedures on volunteers, including patient rights and facility emergency procedures.

(6) All hospital personnel shall be licensed, registered, or certified as required by the Utah Department of Commerce. Copies of the current license, registration or certification shall be in the personnel files. Failure to ensure that the individual is appropriately licensed, registered or certified may result in sanctions to the facility license.

R432-101-11. Quality Assurance.

(1) The facility shall have a well-defined quality assurance plan designed to improve the delivery of patient care through evaluation of the quality of patient care services and resolution of identified problems. The plan shall be consistent with the Plan for Patient Care Services.

(2) The plan shall be implemented and include a method for:

(a) identification and assessment of problems, concerns, or opportunities for improvement of patient care;

(b) implementation of actions that are designed to:

(i) eliminate identified problems where possible;

(ii) improve patient care;

(c) documentation of corrective actions and results;

(d) reporting findings and concerns to the medical, nursing, and allied health care staffs, the administrator, and the governing board.

(3) Documentation of minutes of meetings shall be maintained for Department review.

R432-101-12. Infection Control.

(1) The facility shall have a written plan to effectively prevent, identify, report, evaluate and control infections.

(2) The plan shall include a method to collect and monitor data and carry out necessary follow-up actions.

(3) Infection control actions shall be documented consistent with the requirements of the plan and in accordance with Department requirements and standards of medical practice.

(4) In-service education and training of employees shall be provided to all service and program components of the hospital.

(5) The infection control plan shall be reviewed and revised as necessary, but at least annually.

(6) The hospital shall implement an employee health surveillance program and infection control policy which meets the requirements of R432-100-10 and the following:

(a) complete at the time a person is hired, an employee health inventory that includes the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions that may prevent the employee from satisfactorily performing assigned duties.

(b) develop employee health screening and immunization components of personnel health programs in accordance with Rule R386-702, concerning communicable diseases;

(c) conduct employee skin testing by the Mantoux Method and follow up for tuberculosis in accordance with R388-304, concerning measures for control of tuberculosis:

(i) skin testing must be conducted on each employee annually and after suspected exposure to a resident with active tuberculosis;

(ii) all employees with known positive reaction to skin tests are exempt from skin testing.

(d) report all infections and communicable diseases reportable by law to the local health department in accordance with Section R386-702-2, concerning reportable diseases; and

(e) comply with the Occupational Safety and Health Administration's Bloodborne Pathogen Standard.

R432-101-13. Patient Security.

(1) The facility shall provide sufficient internal and external security measures consistent with the Plan for Patient Care Services. There shall be positive supervision and control of the patient populations at all times to assure patient and public safety.

(2) If a facility offers more than one treatment program or serves more than one age group, patient population or program, the patients shall not be mixed or be co-mingled.

(3) There shall be sufficient supervision to ensure a safe and secure living environment which is defined in the Plan for Patient Care Services.

R432-101-14. Special Treatment Procedures.

There shall be a hospital policy regarding the use of special treatment procedures. It shall include as a minimum:

(1) the use of seclusion, refer to R432-101-23;

(2) the use of restraint, refer to R432-101-23;

(3) the use of convulsive therapy including electroconvulsive therapy;

(4) the use of psychosurgery or other surgical procedures for the intervention or alteration of a mental, emotional or behavioral disorder;

(5) the use of behavior modification with painful stimuli;

(6) the use of unusual, investigational and experimental drugs;

(7) the use of drugs associated with abuse potential and those having substantial risk or undesirable side effects;

(8) an explanation as to whether the hospital will conduct research projects involving inconvenience or risk to the patient; and

(9) involuntary medication administration for emergent and ongoing treatment.

R432-101-15. Patients' Rights.

(1) Each patient shall be provided care and treatment in accordance with the standards and ethics accepted under Title 58 for licensed, registered or certified health care practitioners.

(2) There shall be a committee appointed by the administrator that consists of members of the facility staff, patients or family members, as appropriate, other qualified persons with knowledge of the treatment of mental illness, and at least one person who has no ownership or vested interest in the facility. This committee shall:

(a) review, monitor and make recommendations concerning individual treatment programs established to manage inappropriate behavior, and other programs that, in the opinion of the committee, involve risks to patient safety or restrictions of a patient's rights, or both;

(b) review, monitor and make recommendations concerning facility practices and policies as they relate to drug usage, restraints, seclusion and time out procedures, applications of painful or noxious stimuli, control of inappropriate behavior, protection of patient rights and any other area that the committee believes need to be addressed;

(c) keep minutes of all meetings and communicate the findings to the administrator for appropriate action;

(d) designate a person to act as a patient advocate, to be available to respond to questions and requests for assistance from the patients and to bring to the attention of the committee any issues or items of interest that concern the rights of the patients or their care and status;

(e) recommend written policies with regard to patient rights which are consistent with state law. Once adopted, these policies shall be posted in areas accessible to patients, and made available upon request to the patient, family, next of kin or the public.

(3) The individual treatment plan and clinical orders shall address the following rights to ensure patients are permitted communication with family, friends and others. Restrictions to these rights shall be reviewed by the Patient Rights or Ethics Committee. Limitations to the rights identified in R432-101-(3)(a) through (d) may be established to protect the patient, other patients or staff or where prohibited by law.

(a) Each patient shall be permitted to send and receive unopened mail.

(b) Each patient shall be afforded reasonable access to a telephone to make and receive unmonitored telephone calls.

(c) Each patient shall be permitted to receive authorized visitors and to speak with them in private.

(d) Each patient shall be permitted to attend and participate in social, community and religious groups.

(e) Each patient shall be afforded the opportunity to voice grievances and recommend changes in policies and services to hospital staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal.

(f) Each patient shall be permitted to communicate via sealed mail with the Utah Department of Human Services, the Utah Department of Health, the Legal Center for the People with Disabilities, legal counsel and the courts. The patient shall be permitted to communicate with and to visit with legal counsel or clergy of choice or both.

(4) Each patient shall be afforded the opportunity to participate in the planning of his care and treatment. The patient's participation in the treatment planning shall be documented in the medical record.

(a) Each patient shall receive an explanation of treatment

goals, methods, therapies, alternatives and associated costs.

(b) Each patient shall be able to refuse care and treatment, as permitted by law, including experimental research and any treatment that may result in irreversible conditions.

(c) Each patient shall be informed of his medical condition, upon request, unless medically contraindicated. If contraindicated, the circumstances must be documented in the patient record.

(d) Each patient shall be free from mental and physical abuse and free from chemical and physical restraints except as part of the authorized treatment program, or when necessary to protect the patient from injury to himself or to others.

(5) Each patient shall be afforded the opportunity to exercise all civil rights, including voting, unless the patient has been adjudicated incompetent and not restored to legal capacity.

(a) Patients shall not be required to perform services for the hospital that are not included for therapeutic purposes in the plans of care.

(b) Patients shall not be required to participate in publicity events, fund raising activities, movies or anything that would exploit the patients.

(c) Each patient shall be permitted to exercise religious beliefs and participate in religious worship services without being coerced or forced into engaging in any religious activity.

(d) Each patient shall be permitted to retain and use personal clothing and possessions as space permits, unless doing so would infringe upon rights of other patients or interfere with treatment.

(e) Each patient shall be permitted to manage personal financial affairs, or to be given at least a monthly accounting of financial transactions made on their behalf should the hospital accept a patient's written delegation of this responsibility.

R432-101-16. Emergency and Disaster.

(1) The hospital shall be responsible to assure the safety and well-being of patients.

(a) There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster.

(b) An emergency or disaster may include to utility interruption, such as gas, water, sewer, fuel and electricity, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator or his designee shall be responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters.

(a) This plan shall be in writing and list the coordinating authorities by name and title.

(b) The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(d) The administrator shall be in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(e) Disaster drills, in addition to fire drills, shall be held semiannually for all staff. Drills and staff response to drills shall be documented.

(f) The facility shall identify and post in a prominent location the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the hospital.

(i) Emergency heating must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or lower may constitute a danger to the health and safety of the patients in the hospital. The person in charge shall take immediate and appropriate action.

(4) The hospital's emergency plan shall delineate shall include:

(a) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency in order of priority;

(f) method of transporting and evacuating patients and staff to other locations;

(g) conversion of hospital for emergency use.

(5) The facility shall schedule and hold at least one fire drill per shift per quarter. The facility shall document the date and time the drill was held, including a brief description of the event and participants. Documentation shall be maintained for review by the Department.

(a) There shall be a fire emergency evacuation plan, written in consultation with qualified fire safety personnel.

(b) A physical plant evacuation diagram delineating evacuation routes, location of fire alarm boxes and fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the hospital.

(c) The written plan shall include fire-containment procedures and how to use the hospital alarm systems and signals.

(d) The actual evacuation of patients during a drill is optional.

R432-101-17. Admission and Discharge.

(1) The hospital shall develop written admission, exclusion and discharge policies consistent with the Plan for Patient Care Services and the Utilization Review plan. These policies shall be available to the public upon request.

(2) The hospital shall make available to the public and each potential patient information regarding the various services provided, methods and therapies used by the hospital, and associated costs of such services.

(3) Admission criteria shall be clearly stated in writing in hospital policies.

(a) The facility shall assess and screen all potential patients prior to admission and admit a patient only if it determines that the facility is the least restrictive setting appropriate for their needs. The pre-screening process shall include an evaluation of the patient's past criminal and violent behavior.

(b) Patients shall be admitted for treatment and care only if the hospital is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the patient.

(c) Patients shall be admitted by, and remain under the care of, a member of the medical staff. There shall be a written order for admission and care of the patient at the time of admission. A documented telephone order is acceptable.

(d) There shall be procedures to govern the referral of ineligible patients to alternate sources of treatment where possible.

(e) Involuntary commitment must be in accordance with Section 62A-12-234.

(4) The patient shall be discharged when the hospital is no longer able to meet the patient's identified needs, when care can be delivered in a less restrictive setting, or when the patient no longer needs care.

(a) There shall be an order for patient discharge by a member of the medical staff except as indicated in R432-101-17(4)(b) below.

(b) In cases of discharge against medical advice, AMA, the attending physician or qualified designee shall be contacted and the response documented in the patient record.

(c) Discharge planning shall be coordinated with the patient, family, and other parties or agencies who are able to meet the patient's needs.

(d) Upon discharge of a patient, all money and valuables of that patient which have been entrusted to the hospital shall be surrendered to the patient in exchange for a signed receipt.

R432-101-18. Transfer Agreements.

(1) The hospital shall maintain a written transfer agreement with one or more general acute hospitals to facilitate the placement of patients and transfer of essential patient information in case of medical emergency.

(2) Patients shall not be referred to another facility without prior contact with that facility.

R432-101-19. Pets in Hospitals.

(1) If a hospital chooses to allow pets in the facility, it shall develop a written policy in accordance with these rules and local ordinances.

(2) Household pets, such as dogs, cats, birds, fish, and hamsters, can be permitted only under the following conditions:

(a) pets must be clean and disease free;

(b) the immediate environment of pets must be kept clean;

(c) small pets such as birds and hamsters are kept in appropriate enclosures;

(d) pets not confined in enclosures must be hand held, under leash control, or under voice control;

(e) pets that are kept at the hospital or are frequent visitors shall have current vaccinations, including, but not limited to, rabies, as recommended by a designated licensed veterinarian.

(3) The hospital shall have written policies and procedures for pet care.

(a) The administrator or designee shall determine which pets may be brought into the hospital. Family members may bring a patient's pet to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease free, and vaccinated as appropriate.

(b) Hospitals with birds shall have procedures which protect patients, staff, and visitors from psittacosis. Procedures should ensure minimum handling of droppings. Droppings shall be placed in a plastic bag for disposal.

(c) Hospitals with pets that are kept overnight shall have written policies and procedures for the care, feeding, and housing of such pets and for proper storage of pet food and supplies.

(4) Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a significant health or safety risk to others. Persons caring for any pets shall not have patient care or food handling responsibilities.

R432-101-20. Inpatient Services.

(1) Upon admission, a physician or qualified designee shall document the need for admission. A brief narrative of the patient's condition, including, the nurses admitting notes, temperature, pulse, respirations, blood pressure, and weight, shall be documented in the patient's record. The admission record shall be completed according to hospital policy.

(a) A physician or qualified designee shall make an assessment of each patient's physical health and a preliminary psychiatric assessment within 24 hours of admission. The history and physical exam shall include appropriate laboratory work-up, a determination of the type and extent of special examinations, tests, or evaluations needed, and when indicated, a thorough neurological exam.

(b) A psychiatrist or psychologist or qualified designee shall make an assessment of each patient's mental health within 24 hours of admission. A written emotional or behavioral assessment of each patient shall be entered in the patient's record.

(c) There shall be a written assessment of the patient's legal status to include but not be limited to:

(i) a history with information about competency, court commitment, prior criminal convictions, and any pending legal actions;

(ii) the urgency of the legal situation;

(iii) how the individual's legal situation may influence treatment.

(2) A written individual treatment plan shall be initiated

for each patient upon admission and completed no later than 7 working days after admission. The individual treatment plan shall be based upon the information resulting from the assessment of patient needs, see R432-101-20(1).

(a) The individual treatment plan shall be part of the patient record and signed by the person responsible for the patient's care. Patient care shall be administered according to the individual treatment plan.

(b) Individual treatment plans must be reviewed on a weekly basis for the first three months, and thereafter at intervals determined by the treatment team but not to exceed every other month.

(c) The written individual treatment plan shall be based on a comprehensive functional assessment of each patient. When appropriate, the patient and family shall be invited to participate in the development and review of the individual treatment plan. Patient and family participation shall be documented.

(d) The individual treatment plan shall be available to all personnel who provide care for the patient.

(e) The Utah State Hospital is exempt from the R432-101-20(2) and R432-101-20(2)(b) time frames for initiating and reviewing the individual treatment plan. The Utah State Hospital shall initiate for each patient admitted an individual treatment plan within 14 days and shall review the plan on a monthly basis.

R432-101-21. Adolescent or Child Treatment Program.

(1) A hospital that admits adolescents or children for care and treatment shall have the organization, staff, and space to meet the specialized needs of this specific group of patients.

(a) Children shall be classified as age five to 12 and adolescents ages 13 - 18.

(b) If a child is considered for admission to an adolescent program, the facility shall assess and document that the child's developmental growth is appropriate for the adolescent program.

(c) Adolescent patients who reach their eighteenth birthday, the age of majority, may remain in the facility on the adolescent unit to complete the treatment program.

(2) A mental health professional with training in adolescent or child psychiatry, or adolescent or child psychology, as appropriate, shall be responsible for the treatment program.

(3) Adolescent or child nursing care shall be under the direction of a registered nurse qualified by training, experience, and ability to effectively direct the nursing staff. All nursing personnel shall have training in the special needs of adolescents or children.

(4) There must be educational provision for all patient's of school age who are in the hospital over one month.

(5) Adolescents may be admitted to an adult unit when specifically ordered by the attending member of the medical staff, but may not remain there more than three days unless the clinical director approves orders for the adolescent to remain on the adult unit.

(6) Specialized programs for children must be flexible enough to meet the needs of the children being served.

(a) There shall be a written statement of philosophy, purposes and program orientation including short and long term goals.

(b) The types of services provided and the characteristics of the child population being served shall also be included in the service's policy document. It shall be available to the public on request.

(c) There shall be a written description of the program's overall approach to family involvement in the care of the patient.

(d) There shall be a written policy regarding visiting and other forms of patient communication with family, friends and significant others.

(e) There shall be a written plan of basic daily routines. It shall be available to all personnel and shall be revised as necessary.

(f) There shall be a written complaint process for children in clear and simple language that identifies an avenue to make a complaint without fear of retaliation.

(g) There shall be a comprehensive written guide of preventive, routine, and emergency medical care for all children in the program, including written policies and procedures on the use and administration of psychotropic and other medication.

(h) There shall be a complete health record for each child including:

(i) immunizations;

(ii) medications;

(iii) medical examination;

(iv) vision and dental examination, if indicated by the medical examination;

(v) a complete record of treatment for each specific illness or medical emergency.

(i) The use of emergency medication shall be specifically ordered by a physician or other person licensed to prescribe and be related to a documented medical need.

(j) In addition to the medical record requirements, the child's record shall contain:

(i) documents related to the referral of the child to the program;

(ii) documentation of the child's current parental custody status or legal guardianship status;

(iii) the child's court status, if applicable;

(iv) cumulative health records, where possible;

(v) education records and reports.

(k) The following standards apply to children's programs within a secure, locked treatment facility:

(i) There shall be a statement in the child's record identifying the specific security measures employed and demonstrating that these measures are necessary in order to provide appropriate services to the child.

(ii) There shall be evidence that the staff and the child are aware of the hospital's emergency procedures and the location of emergency exits.

(iii) If children are locked in their rooms during sleeping hours, there shall be a method to unlock the rooms simultaneously from a central point or upon activation of a fire alarm system.

(iv) There shall be a recreational program offering a wide variety of activities suited to the interests and abilities of the children in care.

R432-101-22. Residential Treatment Services.

(1) If offered, the residential treatment service shall be organized as a distinct part of the hospital service, either free-standing or as part of the licensed facility. Residential treatment services shall be under the direction of the medical director or designee.

(2) "Residential Treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider. Individuals are assisted in acquiring the social and behavioral skills necessary for living independently.

(3) The hospital administrator shall appoint a program manager responsible for the day-to-day operation and resident supervision.

(a) The program manager's responsibilities shall be clearly defined in the job description.

(b) Whenever the manager is absent, a substitute manager shall be appointed.

(4) Residential treatment staff shall have specialized training in the area of psychiatric treatment. Staff shall consist of:

(a) a licensed physician;

(b) a certified or licensed clinical social worker;

(c) a licensed psychologist;

(d) a licensed registered nurse; and

(e) unlicensed staff who are trained to work with psychiatric residents and who shall be supervised by a health care practitioner.

(5) Programs admitting children or adolescents shall ensure that their education is continued through grade 12.

(a) Curriculum shall be approved by the Utah Office of Education.

(b) Education services provided by the licensee must be accredited by the Utah State Board of Education or Board Northwest Association of School and Colleges.

(c) Teachers must be certified by the Utah State Board of Education. Certification in Special Education is required where clearly necessary to supervise or carry out educational curriculum.

(6) An individual treatment plan developed by an interdisciplinary team shall be initiated for each resident upon admission and a completed copy placed in the resident record within seven days.

(a) The treatment plan shall identify the resident's needs, as described by a comprehensive functional assessment.

(b) The resident, his responsible party (if available), and facility staff shall participate in the planning of treatment. The facility staff shall encourage the resident's attendance at interdisciplinary team meetings.

(c) The written treatment plan shall set forth goals and objectives stated in terms of desirable behavior that prescribes an integrated program of activities, therapies, and experiences necessary for the resident to reach the goals and objectives.

(7) The comprehensive functional assessment shall consider the resident's age and the implications for treatment. The assessment shall identify:

(a) the presenting problems and disabilities for admission and, where possible, their cause;

(b) specific individual strengths;

(c) special behavioral management needs;

(d) physical health status to include:

(i) a history and physical exam performed by a physician or nurse practitioner which includes appropriate laboratory work-up;

(ii) a determination of the type and extent of special examinations, tests or evaluations needed.

(e) alcohol and drug history;

(f) degree of psychological impairment and measures to be taken to relieve treatable diseases;

(g) the capacity for social interaction and habilitation and rehabilitation measures to be taken;

(h) the emotional or behavioral status based on an assessment of:

(i) a history of previous emotional or behavioral problems and treatment;

(ii) the resident's current level of emotional or behavioral functioning;

(iii) an evaluation by a psychiatrist, psychologist or qualified designee within 30-days prior to admission, or within 24 hours after admission.

(i) if indicated, psychological testing shall include intellectual and personality testing.

(8) The comprehensive assessment shall be amended to reflect any changes in the resident's condition.

(9) An individual treatment plan shall be implemented which provides services to improve the resident's condition which are offered in an environment that encompasses physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components.

(10) The resident shall be encouraged to participate in professionally developed and supervised activities, experiences or therapies in accordance with the individualized treatment plan.

(11) The provisions of R432-101-23. Physical Restraints, Seclusion, and Behavior Management shall apply.

R432-101-23. Physical Restraints, Seclusion, and Behavior Management.

(1) Physical restraints, including seclusion shall only be used to protect the patient from injury to himself or to others or to assist patients to attain and maintain optimum levels of physical and emotional functioning.

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

(3) Each hospital shall develop written policies and procedures that will govern the use of physical restraints and seclusion. A major focus of these policies shall be to provide patient safety and ensure civil and patient rights.

(4) Policies shall incorporate and address at least the following:

(a) examples of the types of restraints and safety devices that are acceptable for use and possible patient conditions for which the restraint may be used;

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

(5) Bed sheets or other linens shall not be used as restraints.

(6) Restraints shall not unduly hinder evacuation of the patient in the event of fire or other emergency.

(7) Physical restraints must be authorized by a member of the medical staff in writing every 24 hours. PRN orders for restraints are prohibited. If a physical restraint is used in behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(c).

(a) Use of restraints will be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process, and documented in the patient's record.

(b) Use of physical restraints, including simple safety devices, may be used only if a specific hazard or need for restraint is present. The physician order must indicate the type of physical restraint or safety device to be used and the length of time to be used. A facility restraint policy may be developed addressing the above items and accepted by reference in the patient care plan.

(c) Physical restraints must be applied by properly trained staff, to ensure a minimum of discomfort, allowing sufficient body movement to ensure that circulation will not be impaired. No restraint shall be used or applied in such a manner as to cause injury or the potential for injury.

(d) Staff shall monitor and assess a patient who is restrained. The restraint shall be released or the patient's position changed at least every two hours, unless written justification is provided for why such restraint release is dangerous to the patient or others.

(e) Physical restraints may be used in an emergency, if there is an obvious threat to life or immediate safety, as follows:

(i) Verbal orders may be given by the physician to a licensed nurse by telephone.

(ii) A licensed health care professional, identified by policy, may initiate the use of a restraint; however, verbal or written approval from the physician must be obtained within one hour.

(iii) A verbal order must be signed by a physician within 24 hours.

(iv) Staff members shall document in the patient's record the circumstances necessitating emergency use of the restraint and the patient's response.

(8) Seclusion must be used in accordance with hospital policy and authorized by a member of the medical staff.

(a) If seclusion is used for behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(e).

(b) Use of seclusion shall be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process. The patient shall be monitored for adverse effects. The evaluations and reviews shall be part of the patient record.

(9) Time out shall be used in accordance with hospital policy, but does not have to be authorized by a member of the medical staff for each use.

The use of time out shall be included in the patient care plan and documented in the patient record.

(10) Hospital policy must establish criteria for admission and retention of patients who require behavior management programs, and shall specify the data to be collected and the location of these data in the clinical record.

(a) The program must be developed by the interdisciplinary team. There must be an opportunity for involvement of the patient, next of kin or designated representative.

(b) A behavior management program must be approved for a patient by the team leader, as described by hospital policy.

(c) Behavior management programs must employ the least restrictive methods to produce the desired outcomes and incorporate a process to identify and reinforce desirable behavior. Consent for use of any behavior management program that employs aversive stimuli must be obtained from the patient, next of kin, or designated representative.

(d) The behavior management program shall be incorporated into the patient care plan.

(e) The behavior management program shall be reviewed routinely by the interdisciplinary team as the patient care conference is conducted, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process.

(f) Documentation in the patient's record shall include:

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

(i) conditions under which the behavior occurs;

(ii) interventions used and their results;

(iii) a behavior management program including specific measurable behavioral objectives, time frames, names, titles, and signature of the person responsible for conducting the program, and monitoring and evaluation methods;

(iv) summaries and dates of the evaluations and reviews by the interdisciplinary team.

R432-101-24. Involuntary Medication Administration.

(1) The facility shall adopt and implement a policy and procedure for patients who refuse a prescribed medication. The policy shall include the following:

(a) the facility staff shall document the refusal of medications in the individual care plan; and

(b) the interdisciplinary team shall review and assess the patient's refusal of medication, ensuring that the patient's rights are protected.

(2) If the interdisciplinary team determines that the patient requires medication, as part of a behavior management program, or for emergency patient management, or for clinical treatment, and a physician or licensed practitioner orders the medication, then the facility staff shall document the physician's order in the individual treatment plan and administer the medication.

(3) If a patient is administered involuntary medications, the facility staff shall review the administration of medications in a patient care conference, each time the physician renews the medication order, and on a day-to-day basis as care is delivered.

(4) The facility staff shall evaluate and assess the patient for adverse side effects. The facility staff shall document the evaluation and assessment in the patient record.

R432-101-25. Outpatient Emergency Psychiatric Services.

(1) If the hospital offers outpatient emergency psychiatric services, the service shall be organized as a service specifically designated for this purpose and under the direction of the medical director or designee.

(a) Services shall be available 24 hours a day to persons presenting themselves for assistance.

(b) If the hospital chooses not to offer emergency outpatient psychiatric services, it shall have a written plan for referral of persons making inquiry regarding such services or presenting themselves for assistance.

(2) The outpatient service shall be supported by policies and procedures including admission, and treatment procedures, and medical and psychiatric reference materials.

(3) Involuntary detention of a person must be according to applicable hospital policy and Utah Law.

R432-101-26. Emergency Services.

(1) Each facility shall provide physician and registered nurse coverage 24 hours per day. Nursing and other allied health professional staff shall be readily available in the hospital. Staff may have collateral duties elsewhere in the hospital, but must be able to respond when needed without adversely affecting patient care or treatment elsewhere in the hospital.

(2) The facility shall have trained staff to triage emergency care for each patient, staff and visitor, to stabilize the presenting condition, and transfer to an appropriately licensed facility.

(3) The facility must have an emergency area which includes a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(4) If the hospital offers additional or expanded emergency services, the service must comply with the provisions of the appropriate sections of R432-100-16.

(5) The hospital shall have protocols for contacting local emergency medical services.

R432-101-27. Clinical Services.

(1) If the following services are used, R432-100 shall apply:

(a) Surgical Services, R432-100-14.

(b) Critical Care Unit, R432-100-13.

(c) Inpatient Hospice, R432-750.

(2) If chemical dependency or substance abuse services are provided, the R432-102 Specialty Hospital - Chemical Dependency/Substance Abuse Rules apply.

R432-101-28. Laboratory.

(1) Each specialty hospital must have a CLIA certificate. If an outside lab is contracted for providing services, the outside lab shall have a CLIA certificate.

(2) If outside laboratory services are secured through contract, the hospital must maintain an in-house ability to collect, preserve and arrange for delivery to the outside laboratory for testing. If additional laboratory services are provided, the hospital must comply with the appropriate sections of R432-100-22.

R432-101-29. Pharmacy.

(1) Each specialty hospital must have the ability to provide in house certain basic services, such as storage, dispensing, and administration of medication.

(2) All pharmacy services must comply with the appropriate sections of R432-100-24.

(3) The facility must have a policy approved by the board and the medical staff on the use of investigational drugs.

R432-101-30. Social Services.

(1) The facility shall provide social services to assist staff, patients, and patients' families to understand and cope with a patient's social, emotional, and related health problems.

(a) Social services shall be under the direction of a licensed clinical social worker. The role and function of social services shall be listed in policy documents and meet generally accepted practices of Mental Health Professional Practice Act.

(b) Social services personnel shall serve as a patient advocate to:

(i) provide services to maximize each patient's ability to adjust to the social and emotional aspects of his situation, treatments, and continued stay in the hospital;

(ii) participate in ongoing discharge planning to assure continuity of care for the patient;

(iii) initiate referrals to official agencies when the patient needs legal or financial assistance;

(iv) maintain appropriate liaison with the family or other responsible persons concerning the patient's placement and rights;

(v) preserve the dignity and rights of each patient.

(2) Each hospital shall develop social services policies and procedures which include at least the following:

(a) a system to identify, plan, and provide services according to the social and emotional needs of patients;

(b) job descriptions, including title and qualifications of all persons who provide social services;

(c) a method to refer patients to outside social services agencies when the hospital is unable to resolve a patient's problems.

(3) The Social Service director shall participate in any pertinent quality assurance activities of the hospital.

R432-101-31. Activity Therapy.

(1) The hospital shall provide activity therapy services to meet the physical, social, cultural, recreational, health maintenance and rehabilitational needs of patients as defined in the patient care plan.

(a) The activity therapy service shall have policies that describe the organization of the service and provision for services to the patient population.

(i) Program goals and objectives shall be stated in writing.

(ii) Appropriate activities shall be provided to patients during the day, in the evening, and on the weekend.

(iii) Patient participation in planning shall be sought, whenever possible.

(iv) Activity schedules shall be posted in places accessible to patients and staff.

(b) Activity therapy shall be incorporated into the patient care plan.

(c) Patients shall be permitted leisure time and encouraged to use it in a way that fulfills their cultural and recreational interests and their feelings of human dignity.

(2) The activity therapy service shall be supervised by an individual.

(3) The facility shall provide sufficient space, equipment, and facilities to meet the needs of the patients. Space, equipment, and facilities shall meet federal, state and local requirements for safety, fire prevention, health, and sanitation.

R432-101-32. Other Services.

If the following services are provided, R432-100 shall apply:

(a) Anesthesia Services, R432-100-15.

(b) Rehabilitation Therapy Services, R432-100-20.

(c) Radiology, R432-100-21.

(d) Respiratory Care Services, R432-100-19.

R432-101-33. Medical Records.

(1) The hospital shall comply with the provisions of R432-100-33.

(2) Contents of the patient record shall describe a patient's physical, social and mental health status at the time of admission, the services provided, the progress made, and a patient's physical, social and mental health status at the time of discharge.

(a) The patient record identification data recorded on standardized forms shall include the patient's name, home address, date of birth, sex, next of kin, marital status, and date of admission.

(b) The patient record shall include:

(i) involuntary commitment status, including relevant legal documents;

(ii) date the information was gathered, and names and signatures of the staff members gathering the information.

(c) The patient record shall contain pertinent information on the course of treatment to include:

(i) signed orders by physicians and other authorized practitioners for medications and treatments;

(ii) relevant physical examination, medical history, and physical and mental diagnoses using a recognized diagnostic coding system;

(iii) information on any unusual occurrences, such as treatment complications, accidents, or injuries to or inflicted by the patient, and procedures that place the patient at risk;

(iv) documentation of patient and family involvement in the treatment program;

(v) progress notes written by the psychiatrist, psychologist, social worker, nurse, and others significantly involved in active treatment;

(vi) temperature, pulse, respirations, blood pressure, height, and weight notations, when indicated;

(vii) reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(viii) correspondence with signed and dated notations of telephone calls concerning the patient's treatment;

(ix) a written plan for discharge including an assessment of patient needs;

(x) documentation of any instance in which the patient was absent from the hospital without permission;

(xi) the patient care plan.

(d) There shall be a discharge summary signed by the attending member of the medical staff and entered into the patient record within 30 calendar days from the date of discharge. In the event a patient dies, the discharge statement shall include a summary of events leading to the death.

(e) The patient record shall contain evidence of informed consent or the reason it is unattainable.

(f) The patient record shall contain consent for release of information, the actual date the information was released, and the signature of the staff member who released the information. The patient shall be informed of the release of information as soon as possible.

(g) The hospital may release pertinent information to personnel responsible for the individual's care without the patient's consent under the following circumstances:

(i) in a life-threatening situation;

(ii) when an individual's condition or situation precludes obtaining written consent for release of information;

(iii) when obtaining written consent for release of information would cause an excessive delay in delivering essential treatment to the individual.

R432-101-34. Ancillary Services.

If the following services are used, R432-100 shall apply:

(1) Central Supply, R432-100-34.

(2) Dietary, R432-100-31.

(3) Laundry, R432-100-35.

(4) Maintenance Services, R432-100-37.

(5) Housekeeping, R432-100-36.

R432-101-35. Partial Hospitalization Services.

(1) If the hospital offers a partial hospitalization program, the following services may be included:

(a) crisis stabilization or the provision of intensive, short-term daily programming which averts psychiatric hospitalization or offers transitional treatment back into community life in order to shorten an episode of acute inpatient care; and

(b) intermediate term treatment which provides more extended, daily, goal directed clinical services for a population at high risk for hospitalization or readmission due to the serious or persistent nature of their psychiatric, emotional behavioral, or addictive disorder.

(2) If the specialty hospital offers partial hospitalization services, the hospital shall establish policies and procedures to address the following:

(a) Criteria for admission indicating a DSM IV Mental or Nervous condition;

(b) Assessment;

(c) Treatment Planning;

(d) Active treatment;

(e) Coordination of Care; and

(f) Discharge criteria.

R432-101-36. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6

and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

May 1, 1997	**26-21-5**
Notice of Continuation December 23, 1997	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-102. Specialty Hospital - Chemical Dependency/Substance Abuse.
R432-102-1. Legal Authority.

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

R432-102-2. Purpose.

This rule applies to the hospital that chooses to be licensed as a specialty hospital and which has as its major single service the treatment of patients with chemical dependency/substance abuse. If a specialty hospital chooses to have a dual major service, e.g., chemical dependency/substance abuse and psychiatric care, then both of the appropriate specialty hospital rules apply.

R432-102-3. Time for Compliance.

All specialty hospitals, - chemical dependency/substance abuse, obtaining licensure for the first time shall fully comply with this rule.

R432-102-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Refer to R432-101-4(2) definition of "specialty hospitals".

R432-102-5. Licensure.

License required. Refer to R432-2.

R432-102-6. General Construction Rules.

Specialty Hospital - Chemical Dependency/Substance Abuse Hospital Construction Rules, R432-8, apply to construction and remodel of the facility.

R432-102-7. Organization.

Refer to R432-100-5, Governing Body.

R432-102-8. Administrator.

Refer to R432-100-6, Administrator.

R432-102-9. Medical and Professional Staff.

(1) Refer to R432-100-7, Medical and Professional Staff.

(2) Medical and Professional staff members may be retained either on a full-time basis, a part-time basis or by contract to fulfill the requirements and needs of the treatment programs offered.

(3) Medical and Professional staff shall be assigned specific responsibilities on the treatment team as qualified by training and educational experience and as permitted by hospital policy and the scope of their license.

R432-102-10. Nursing.

Refer to R432-100-12, Nursing Care Services.

R432-102-11. Personnel Management Service.

(1) The hospital shall provide sufficient medical and professional staff and support personnel who are able and competent to perform their respective duties, services, and functions to meet hospital service and patient care needs.

(2) Written personnel policies and procedures shall include:

a) job descriptions for each position, including job title, job summary, responsibilities, minimum qualifications, required skills and licenses, and physical requirements;

(b) a method to handle and resolve grievances from the staff.

(3) All employees shall be oriented as to job requirements and personnel policies, and provided with job training beginning the first day of employment. Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first month of employment.

(a) Registered nurses and licensed practical nurses shall receive additional orientations to include the following:

(i) concepts of treatment provided within the hospital for patients with chemical dependency/substance abuse diagnoses;

(ii) roles and functions of nurses in treatment programs for patients with chemical dependency/substance abuse diagnoses;

(iii) medications used in the treatment of chemical dependency/substance abuse diagnoses.

(b) In-service sessions shall be planned and held at least quarterly.

(c) Documentation shall be maintained to demonstrate that all staff have attended an annual in-service on the reporting requirements for abuse, neglect and exploitation for adults and children.

(4) The hospital shall ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce. Copies of the license, registration, or certificate shall be maintained for Department review in the personnel files.

(5) Volunteers may be utilized in the daily activities of the hospital but shall not be included in the hospital's staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened by the administrator or designee and supervised according to hospital policy.

(b) Volunteers shall be familiar with the hospital's policies and procedures on volunteers, including patient rights and facility emergency procedures.

R432-102-12. Clinical Services.

(1) The hospital shall organize and establish an inpatient clinical services program that includes the following elements: detoxification; counseling; and, a referral process to outpatient programs.

(a) Detoxification services i.e., the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling and nursing care shall be provided according to medical orders and facility protocols.

(b) Counseling services i.e, individual, group, or family therapy shall be provided as indicated in the individual treatment plan. There shall be provision for educational, employment, or other counseling as needed.

(c) There shall be a referral process to outpatient treatment services coordinated with other hospital and community services for continuity of care. Counselors shall refer clients to public or private agencies for substance abuse rehabilitation, employment and educational counseling, as indicated in the individual treatment plan.

(2) The hospital may provide therapy programs and services on an outpatient basis. These programs and services shall be organized, staffed and managed according to the requirements and needs of the services offered. The therapy programs and services shall be subject to the same medical, administrative and quality assurance oversight as inpatient clinical services programs.

R432-102-13. Crisis Intervention Services.

(1) If offered, the crisis intervention service shall be organized under the direction of the medical director or designee.

(a) Services shall be available at any hour to persons presenting themselves for assistance.

(b) The following public areas shall be available in the crisis intervention service area:

(i) an interview and treatment area for both individuals and families;

(ii) a reception and control area;

(iii) a public waiting area with telephone, drinking fountain and toilet facilities.

(2) If the hospital chooses not to offer crisis intervention services, the hospital shall have a written referral plan for persons making inquiry regarding such services or presenting themselves for assistance.

(3) The crisis intervention service shall have physician coverage 24 hours a day.

(a) Nursing and other allied health professional staff shall be available in the hospital.

(b) Staff may have collateral duties elsewhere in the hospital, but must be able to respond when needed without adversely affecting patient care or treatment elsewhere in the hospital.

(4) The crisis intervention service shall implement policies and procedures which include admission, treatment, medical procedures and applicable reference materials. Involuntary detention of a person must be done according to hospital policy and Utah Law.

R432-102-14. Patient Record.

(1) Refer to R432-100-33, Medical Records.

(2) The content of the patient record shall contain in addition:

(a) progress notes, including description and date of service, with a summary of client progress, signed by the therapist or service provider;

(b) a discharge summary, including final evaluation of treatment and goals attained and signed by the therapist.

(3) A written individual treatment plan shall be initiated for each patient upon admission and completed no later than seven working days after admission.

(a) The individual treatment plan shall be part of the patient record and signed by the person responsible for the patient's care. Patient care shall be administered according to the individual treatment plan.

(b) Individual treatment plans must be reviewed on a weekly basis for the first three months, and thereafter at intervals determined by the treatment team, but not to exceed every other month.

(c) The written individual treatment plan shall be based on a comprehensive functional medical, psycho-social, substance abuse, and treatment history assessment of each patient. When appropriate, the patient and family shall be invited to participate in the development and review of the individual treatment plan. Patient and family participation shall be documented.

(d) The individual treatment plan shall be available to all personnel who provide care for the patient.

(e) The Utah State Hospital is exempt from the time frames for initiating and reviewing the individual treatment plan. The Utah State Hospital shall initiate for each patient admitted an individual treatment plan within 14 days and shall review the plan on a monthly basis.

(4) The confidentiality of the records of substance abuse patients shall be maintained according to the federal guidelines is adopted and incorporated as reference 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

R432-102-15. Required Hospital Services.

The following sections of the General Hospital Standards, R432-100, and the Specialty Hospital - Psychiatric Standards, R432-101, are adopted by reference. These services shall be provided as part the of the hospital's patient care service milieu:

(1) R432-100-31, Dietary Services;

(2) R432-100-35, Laundry Services;

(3) R432-100-37, Maintenance Services;

(5) R432-100-36, Housekeeping Services;

(6) R432-101-11, Quality Assurance;

(7) R432-101-15, Patient Rights;

(8) R432-101-16, Emergency and Disaster;

(9) R432-101-17, Admission and Discharge Policy;

(10) R432-101-18, Transfer Agreement;

(11) R432-101-19, Pets in Hospitals;

(12) R432-101-23, Physical Restraints, Seclusion, and Behavior Management;

(13) R432-101-28, Laboratory;

(14) R432-101-29, Pharmacy;

(15) R432-101-30, Social Services; and,

(16) R432-101-31, Activity Therapy.

R432-102-16. Optional Hospital Services.

The following sections of the General Hospital Standards, R432-100, and the Specialty Hospital - Psychiatric Standards, R432-101, are adopted by reference. These sections shall apply when these services are adopted into, or are required by, the hospital's patient care service milieu.

(1) R432-100-13, Critical Care Unit;

(2) R432-100-18, Pediatric Services;

(3) R432-750, Inpatient Hospice;

(4) R432-100-20, Rehabilitation Therapy Services;

(5) R432-100-21, Radiology Services;

(6) R432-100-19, Respiratory Services;

(7) R432-100-34, Central Supply Services; and,

(8) R432-101-20(1), Inpatient (Psychiatric) Services.

R432-102-16. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as

provided in 26-21-16.

KEY: health facilities
June 26, 1998 26-21-5
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26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-103. Specialty Hospital - Rehabilitation.
R432-103-1. Legal Authority.

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

R432-103-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of program standards for the operation of rehabilitation hospitals.

R432-103-3. Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-103-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Refer to definition of "specialty hospital", R432-101-4(2).

R432-103-5. Licensure.

License required. Refer to R432-2.

R432-103-6. General Construction Rules.

Refer to R432-9, Rehabilitation Construction Rule.

R432-103-7. Organization and Staff.

(1) The hospital shall be staffed, organized and operated to coordinate all offered services of the hospital.

(a) The responsibility for administrative direction shall be vested in a trained rehabilitation counselor or other licensed health care professional with experience or training acceptable to the governing board.

(b) A trained rehabilitation counselor or other professionally licensed staff member, as permitted by law and hospital policy, shall serve as the primary therapist.

(c) There shall be a multi-disciplinary team that includes a physician, registered nurse, and rehabilitation counselor that is responsible for program and treatment services.

(2) There shall be written policies and procedures approved by the board and reviewed annually that address at least the following:

(a) staff and their responsibilities;
(b) program services;
(c) patient assessment;
(d) treatment and discharge.

R432-103-8. Professional Staff.

(1) The rehabilitation services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.

(2) All staff must be licensed, registered or certified by the Utah Department of Commerce for their respective disciplines.

R432-103-9. Medical Staff.

The medical direction of the rehabilitation care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff and appointed by the governing body.

R432-103-10. Other Policies and Procedures.

For the following policies and procedures, R432-100 shall apply:

(1) The Governing Body, R432-100-5.
(2) Administrator, R432-100-6.
(3) Nursing Care Services, R432-100-12.
(4) For the following policies and procedures, R432-101 shall apply:
(a) Volunteers, R432-101-10(5).
(b) Quality Assurance, R432-101-11.
(c) Patient Rights, R432-101-15.
(d) Emergency and Disaster, R432-101-16.
(e) Admission and Discharge, R432-101-17.
(f) Transfer Agreements, R432-101-18.
(g) Pets In Hospitals, R432-101-19.

R432-103-11. Rehabilitation Services.

(1) Medical staff participation in the delivery of physical rehabilitation services shall be provided by a qualified physician member of the medical staff who is knowledgeable about rehabilitation medicine by reason of training and experience. Qualified, competent professional and support personnel shall be available to meet the objectives of the service and the needs of the patients.

(2) A qualified professional for physical rehabilitation services shall complete a functional assessment and evaluation.

(a) A treatment plan shall be developed based on an evaluation that includes an assessment of functional ability appropriate to the patient.

(b) Measurable goals, which are described in functional or behavioral terms, shall be established for the patient and include time frames for achievement.

(c) The patient's progress and the results of treatment shall be assessed at least monthly for outpatients and at least every two weeks for inpatients.

(d) The patient's progress and response to treatment shall be documented in the medical record.

R432-103-12. Occupational Therapy.

Occupational therapy services shall include the following:

(1) the assessment and treatment of occupational performance, including:
(a) independent living skills,
(b) prevocational or work skills,
(c) educational skills,
(d) leisure abilities, and
(e) social skills;

(2) the assessment and treatment of performance components, including:
(a) neuromuscular,
(b) sensori-integrative,
(c) cognitive, and
(d) psychosocial skills;

(3) therapeutic interventions, adaptations, and prevention; and

(4) individualized evaluations of past and current performance, based on observations of individual or group tasks, standardized tests, record review, interviews, and/or activity histories.

(5) Occupational therapy services staff shall document and monitor the extent to which goals are met relative to assessing and increasing the patient's functional abilities in daily living and relative to preventing further disability.

R432-103-13. Physical Therapy.

Refer to R432-100-20.

R432-103-14. Clinical Services.

Where the following services are used, R432-100 shall apply:

(1) Critical Care Unit, R432-100-13.
(2) Surgery Services, R432-100-14.
(3) Outpatient Services, R432-100-28.
(4) Pediatric Services, R432-100-18.
(5) Inpatient Hospice, R432-750.

R432-103-15. Ancillary Services.

The following services, if provided, shall comply with R432-100 as follows:

(1) Central supply, R432-100-34.
(2) Dietary, R432-100-31.
(3) Laundry, R432-100-35.
(4) Maintenance Services, R432-100-37.
(5) Housekeeping Services, R432-100-36.

R432-103-16. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities (an equivalent of the Joint Commission's Level IV emergency service).

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(3) Any additional or expanded emergency services offered must comply with the provisions of the appropriate sections of R432-100-16.

(4) Provision for protocols for contacting local emergency medical services.

R432-103-17. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

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	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-104. Specialty Hospital - Chronic Disease.
R432-104-1. Legal Authority.

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

R432-104-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of program standards for the operation of chronic disease hospitals.

R432-104-3. Definition.

(1) Refer to R432-1-3.

R432-104-4. License.

(1) To be licensed as a chronic disease hospital the facility shall:

(a) Have a duly constituted governing body with overall administrative and professional responsibility;

(b) Have an organized medical staff which provides 24-hour inpatient care;

(c) Have a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;

(d) Maintain at least one nursing unit containing patient rooms, patient care spaces, and service spaces defined in construction rules R432-10-3;

(e) Each nursing unit shall contain at least six patient beds;

(f) Rooms and spaces comprising each nursing unit shall be organized in a contiguous arrangement.

(g) Maintain current and complete medical records.

(h) Provide continuous registered nurse supervision and other nursing services;

(i) Provide in house the following basic services:

(i) Pharmacy;

(ii) Laboratory;

(iii) Nursing services

(iv) Occupational, Physical and Speech therapies;

(v) Dietary;

(vi) Social Services;

(vii) Specialized Diagnosis and therapeutic services.

(2) The chronic disease hospital shall provide on site all basic service required of a general hospitals that are needed for the diagnosis, therapy, and treatment offered or required by all patients admitted to the hospital.

(3) Rooms and spaces compromising each nursing unit shall be organized in an contiguous arrangement.

R432-104-5. General Design Requirements.

See R432-10, Chronic Disease Hospital Construction Rules.

R432-104-6. Organization and Staff.

(1) The following services and policies shall comply with R432-100.

(a) Governing Body, R432-100-5.

(b) Administrator, R432-100-6.

(c) Medical and Professional Staff, R432-100-.

(d) Nursing Care Services, R432-100-12.

(e) Personnel Management Services, R432-100-8.

(f) Infection Control, R432-100-10.

(g) Quality Improvement Plan, R432-100-9.

(h) Patient Rights, R432-100-11.

R432-104-7. Admission Policy.

(1) A Chronic Disease Hospital shall implement as admission policy which complies with R432-104-7(2) and R432-104-3.

(2) Patients who have one or more of the following conditions may be admitted to a Chronic Disease Hospital:

(a) Patient is medically unstable due to chronic or long-term illness and requires a weekly physician visit.

(b) Patient requires dangerous drug therapy, continuous use of a respirator or ventilator, or suctioning or nasopharyngeal aspiration at least once per nursing shift.

(c) Patient may have one of the following conditions:

(i) uncontrolled epileptic seizures more than three times a week;

(ii) assaultive or disruptive episodes at least once per week along with at least two skilled nursing services at the frequency described in R432-104-7(2)(d) below;

(d) Patient requires skilled nursing services and care in excess of those services provided in a nursing care facility.

(i) Patient is dependent on others for activities of daily living;

(ii) Patient requires at least three of the following treatments at the specified frequency;

(A) extensive dressings for deep decubiti, surgical wounds, or vascular ulcers daily;

(B) isolation for infectious disease 24 hours per day;

(C) suctioning three days per week;

(D) occupational therapy, physical therapy, or speech therapy five days a week;

(E) special ostomy care daily;

(F) oxygen daily;

(G) traction; or

(H) catheter or wound irrigation daily.

R432-104-8. Clinical Services.

The following services shall be provided in-house and comply with R432-100.

(1) Pharmacy Service, R432-100-24.

(2) Laboratory Service, R432-100-23.

(3) Rehabilitation Therapy Services, R432-100-20.

(4) Dietary Service, R432-100-31.

(5) Social Services, R432-100-25.

(6) Occupational Therapy Services shall be available for all patients who require the service.

(a) The occupational therapy services shall be directed by a licensed occupational therapist who shall have administrative responsibility for the occupational therapy department.

(b) Staff occupational therapists shall be licensed by the Utah Department of Commerce Title 58, Chapter 42.

(i) If Occupational Therapy Assistants are employed to provide patient services they shall be supervised by a licensed therapist.

(ii) Patient services shall be commensurate with each person's documented training and experience.

(c) Occupational Therapy services shall be initiated by an

order from the medical staff.

(d) Written policies and procedures shall be developed and approved in conjunction with the medical staff to include:

(i) Methods of referral for services,

(ii) Scope of services to be provided,

(iii) Responsibilities of professional therapists,

(iv) Admission and discharge criteria for treatment,

(v) infection control,

(vi) safety,

(vii) individual treatment plans, objectives, clinical documentation and assessment,

(viii) incident reporting system,

(ix) emergency procedures.

(e) Equipment shall be calibrated to manufacturer's specifications.

(f) There shall be a written individual treatment plan for each patient appropriate to the diagnoses and condition.

(g) The Occupational Therapy department shall organize and participate in continuing education programs.

(7) Speech Therapy services shall be available for all patients who require the service.

(a) The Speech-Pathology language services shall be directed by a licensed Speech-Pathologist or Audiologist who shall have administrative responsibility for the Speech-Audiology therapy department.

(b) Staff speech therapist and audiologist shall be licensed the Utah Department of Commerce, see Title 58, Chapter 41.

(i) If Speech-language pathology aides or audiology aides are employed to provide patient services they shall be supervised by a licensed therapist.

(ii) Patient services shall be commensurate with each person's documented training and experience.

(c) Speech and Audiology services shall be initiated by an order from the medical staff.

(d) Written policies and procedures shall be developed and approved in conjunction with the medical staff to include:

(i) Methods of referral for services,

(ii) Scope of services to be provided,

(iii) Responsibilities of professional therapists,

(iv) Admission and discharge criteria for treatment,

(v) infection control,

(vi) Assistive Technology,

(vii) individual treatment plans, objectives, clinical documentation and assessment,

(viii) incident reporting system,

(ix) emergency procedures.

(e) Equipment shall be calibrated to manufacturer's specifications.

(f) There shall be a written individual treatment plan for each patient appropriate to the diagnoses and condition.

(g) The Department shall organize and participate in continuing education programs.

R432-104-9. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, and visitors and to persons who may be unaware of or unable to immediately reach services in other facilities.

(2) Provisions for services shall include:

(a) Treatment room;

(b) Storage for supplies;

(c) Provisions for reception area and control of walk-in traffic;

(d) Patient toilet room;

(e) Telephone service in order to call the poison control center;

(f) Staff available in the facility to respond in case of an emergency.

R432-104-10. Complementary Services.

When the following services are provided in-house they shall comply with R432-100.

(1) Anesthesia Services, R432-100-15.

(2) Radiology Services, R432-100-21.

(3) Respiratory Service, R432-100-19.

(4) Surgical Services, R432-100-14.

(5) Critical Care Unit, R432-100-13.

(6) Outpatient Services, R432-100-28.

(7) Pediatric Services, R432-100-18.

(8) Hospice, R432-750.

R432-104-11. Ancillary Services.

The following services shall be provided in-house and shall comply with R432-100.

(1) Central Supply, R432-100-34.

(2) Laundry, R432-100-38.

(3) Medical Records, R432-100-33.

(4) Maintenance, R432-100-37.

(5) Housekeeping, R432-100-36.

(6) Emergency and Disaster Plans, R432-100-38.

R432-104-12. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

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	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-105. Specialty Hospital - Orthopedic.
R432-105-1. Legal Authority.

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

R432-105-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of an orthopedic specialty hospital.

R432-105-3. Time for Compliance.

All Orthopedic Specialty hospitals shall be licensed and in full compliance with R432-105.

R432-105-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Special definitions.

(a) "Orthopedic Specialty Hospital" means a specialty hospital that provides evaluation, diagnosis, and treatment of individuals with a primary diagnosis of musculoskeletal disorders and injuries as defined in the Orthopaedic ICD-9-CM.

(b) "Donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(c) "Transfusion service" means a facility that may prepare blood components, but also stores, determines compatibility, transfuses blood and blood components and monitors transfused patients for any ill effect.

(d) "Blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(3) See definition of "specialty hospital", R432-101-4(2).

R432-105-5. Licensure.

License required. Refer to R432-2.

R432-105-6. General Construction Rules.

Refer to R432-11. Orthopedic Specialty Hospital Construction Rule.

R432-105-7. Organization and Staff.

The following services and policies shall comply with R432-100:

(1) Administrator, R432-100-6.
(2) Medical and Professional Staff, R432-100-7.
(3) Nursing Care Services, R432-100-12.
(4) Personnel Management Service, R432-100-8.
(5) Infection Control, R432-100-10.
(6) Quality Improvement Plan, R432-100-9.
(7) Patient Rights, R432-100-11.
(8) Governing Body, R432-100-5.

R432-105-8. Admission Policy.

An orthopedic specialty hospital is limited to serving patients that meet the following criteria:

(1) Each patient shall have a primary admitting diagnosis that requires evaluation, diagnosis and treatment of a musculoskeletal disorder or injury, as defined in the Orthopaedic ICD-9-CM, the International Classification of Diseases, 9th Edition, Clinical Modification, Expanded, published by the American Academy of Orthopaedic Surgeons which is adopted and incorporated by reference and;

(2) There is a reasonable expectation that the patient's needs can be met by the services provided by the orthopedic specialty hospital.

R432-105-9. Clinical Services.

The following services shall comply with R432-100:

(1) Surgical Services, R432-100-14.
(2) Critical Care Unit, R432-100-13.
(3) Outpatient Services, R432-100-28.
(4) Pediatric Services, R432-100-18.

R432-105-10. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities.

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication access to a poison control center.

(3) Additional Emergency Services.

Any additional or expanded emergency services offered shall comply with the provisions of the appropriate sections of R432-100-16.

R432-105-11. Complementary Services.

The following services shall comply with R432-100:

(1) Anesthesia Services, R432-100-15.
(2) Blood Services, R432-100-15.
(3) Laboratory and Pathology, R432-100-22.
(4) Pharmacy, R432-100-24.
(5) Radiology, R432-100-21.
(6) Respiratory Care, R432-100-19.
(7) Social Services, R432-100-25.

R432-105-12. Ancillary Services.

The following services shall comply with R432-100:

(1) Central Supply, R432-100-34.
(2) Dietary, R432-100-31.
(3) Laundry, R432-100-35.
(4) Medical Records, R432-100-33.
(5) Emergency and Disaster Plans, R432-100-38.
(6) Maintenance Services, R432-100-37.
(7) Housekeeping Services, R432-100-36.

R432-105-13. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

March 3, 1995	**26-21-5**
Notice of Continuation December 15, 1997	**26-21-2.1**
	26-21-20

R432. Health, Health Systems Improvement, Licensing.
R432-106. Speciality Hospital - Critical Access.
R432-106-1. Legal Authority.

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

R432-106-2. Purpose.

The purpose of this rule is to promote the public health and welfare through establishment of a specialty hospital category for rural hospitals. Its intent is to allow rural communities to: preserve access to primary care and emergency health care services, provide health care services which meet community needs, and help assure the financial viability of program participants through improved reimbursement and different operating requirements. The rule sets standards for the operation of a Critical Access Hospital,(CAH). The standards of patient care apply to inpatient, outpatient, and satellite services.

R432-106-3. Definitions.

For purposes of this rule the definitions in R432-1-3 apply. In addition the following definitions apply:

(1) "Critical Care Access Hospital" means a nonprofit, profit or public hospital that meets the criteria set forth in 42 U.S.C. 1395i-4(c)(2)(B)(1988). Each CAH must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Volume 3, Parts 430 to End, 1999, which is adopted and incorporated by reference. The distance from another hospital may be waived if the facility meets any of the following sub-criteria and is designated as a necessary provider by the state.

(a) An area that meets federal criteria for designation as a Health Professional Shortage Area (HPSA).

(b) A county where the percentage of population age 65 or older exceeds the current state average.

(c) A county where the percentage of families with incomes less than 200% of federal poverty level is higher than the current state average.

(d) A county whose population density meets the "rural"(between 7 and 100 people per square mile) or the "frontier" (6 or fewer people per square mile) definition.

(e) A county where the unemployment rate is higher than that of the state.

(f) An area where, throughout the course of a year, has an increase in population due to the influx of migrant workers or tourists.

(g) Combined acute inpatient days for Medicare and Medicaid beneficiaries, and unreimbursed care patients account for at least 50% of the hospital's total acute inpatient days in the last full year for which data was available.

(2) "Referral Hospital" means a hospital that has sufficient resources to receive emergency or non-emergency patient transfers and referrals from a CAH. Sufficient resources include at least three full-time physicians on staff and licensure as a general hospital.

R432-106-4. Licensure.

A license is required as identified in section R432-2.

R432-106-5. Construction, Facilities, and Equipment Standards.

(1) Each rural hospital, licensed prior to July 1, 2000, which elects to convert to a CAH, may maintain the physical plant which is currently licensed, without having to meet the current construction or building code for a general acute care hospital.

(2) New hospitals constructed as a CAH, or when a CAH is re-modeled, shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

R432-106-6. Critical Access Hospital Swing-Bed Units.

The CAH participating in the swing-bed program may maintain up to 10 swing-beds for care at one time. In addition to R432-106, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules:

(1) R432-150-4, Definitions.
(2) R432-150-12, Resident Rights.
(3) R432-150-13, Resident Assessment.
(4) R432-150-14, Restraint Policy.
(5) R432-150-15, Quality of Care.
(6) R432-150-17, Social Services.
(7) R432-150-20, Recreation Therapy.

R432-100-7. Hospital Rules.

The following sections of R432-100, General Hospital Rules, are adopted and incorporated by reference.

(1) A CAH shall comply with the following:
(a) R432-100-5, Governing Body.
(b) R432-100-6, Administrator.
(c) R432-100-7, Medical and Professional Staff.

Credentialing of medical and professional staff may be performed by a network hospital or a Department approved equivalent.

(d) R432-100-8, Personnel Management Services.
(e) R432-100-9, Quality Improvement Plans.

Quality improvement may be performed by a network hospital or a Department approved equivalent.

(f) R432-100-10, Infection Control.
(g) R432-100-11, Patient Rights.
(h) R432-100-12, Nursing Services.

A qualified registered nurse is not required to be on duty on a 24-hour basis, but shall be on duty if one acute care patient is admitted.

(i) R432-100-16, Emergency Services.

The hospital must make available 24-hour emergency care services, seven days a week, regardless of inpatient census. The CAH shall ensure at least one physician is on call at all times. The 30 minute response requirement is amended to 60 minutes if the CAH qualifies under Section 485.618 (d) (2) of the Federal Conditions of Participation.

(j) R432-100-21, Radiology Services.

Radiology services may be provided off-site through a network hospital or through other arrangements approved by the Department.

(k) R432-100-22, Laboratory and Pathology Services.
(l) R432-100-24, Pharmacy Services.
(m) R432-100-29, Respite Services.
(n) R432-100-31, Dietary Services.

(o) R432-100-33, Medical Records.
(p) R432-100-36, Housekeeping Services.
(q) R432-100-37, Maintenance Services.
(r) R432-100-38, Emergency and Disaster Plans.

(2) If the CAH provides the following clinical or ancillary services then the following shall apply:

(a) R432-100-14, Surgical Services.
(b) R432-100-15, Anesthesia Services.
(c) R432-100-17, Perinatal Services.
(d) R432-100-19, Respiratory Services.
(e) R432-100-23, Blood Services.
(f) R432-100-32, Telemedicine Services.
(g) R432-100-34, Central Supply.
(h) R432-100-35, Laundry Services.

R432-106-8. Rural Health Network.

(1) The participating CAH shall be a member of a rural health network, as evidenced by a signed, written agreement with at least one Referral Hospital that is a member of the network.

(2) The agreement shall address the following:

(a) Patient referral and transfer;

(b) The development and use of communications system; and

(c) Emergency and non-emergency transportation.

R432-106-9. Conversion to a General Hospital.

Within 18 months of conversion to the specialty CAH, a hospital may submit a Request for Agency Action to convert to a General Hospital category without being required to meet the current R432-104, General Construction standards.

R432-106-10. Penalty.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities
January 23, 2001 **26-21-5**
26-21-2.1
26-21-13.6

R432. Health, Health Systems Improvement, Licensing.
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 R156-17a-619; 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 at least monthly consulation by a certified dietitian according to the needs of the residents.

(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 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-151. Mental Disease Facility.
R432-151-1. Legal Authority.

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

R432-151-2. Purpose.

The purpose of the rule is to establish program standards for a mental disease facility (MDF) that is engaged primarily in providing diagnosis, treatment or care of persons with mental disease, including medical attention, nursing care and related services.

R432-151-3. General Provisions.

(1) R432-150 also applies to a Mental Disease Facility.

(2) The Department shall consider the following to determine whether a facility is an MDF:

(a) The facility specializes in providing psychiatric care and treatment, with emphasis on active treatment programs which focus on mental disease.

(b) Fifty per cent or more of the residents in the facility have a diagnosis of mental disease (using the ICD-9-CM codes) excluding the following:

(i) 290 through 294.9 and 310 through 310.9 for senility or organic brain syndrome;

(ii) 317 through 319 for mental retardation;

(iii) 314 through 315.9 for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons; and

(iv) 309 and 316 for Adjustment Reaction or Psychic factors associated with disease classified elsewhere.

(3) A facility that is determined to be an MDF according to this rule must be licensed as a mental disease facility.

(4) When a facility census identifies 40 per cent or more of the resident population with a mental disease diagnosis, the Department may request the facility to submit a completed Utah Level of Care Survey (ULOCS).

R432-151-4. Definitions.

(1) See common definitions in rule R432-1-3.

(2) Special definitions.

(a) "Utah Level of Care Scale" means the results of an empirical, validated assessment of resident level of function using the Utah Level of Care Survey instrument.

(b) "Utah Level of Care Survey" means a survey which includes a set of behavioral observations that provide a cross-sectional profile of resident functional deficits and care needs. The scale defines six service pattern types which reflect simultaneous consideration of physical and psychosocial care needs.

R432-151-5. Treatment Programs.

The facility shall develop and maintain standards through written policies and procedures for staff participation and for resident services.

(1) Goals, objectives, and available programs for treatment of mental disease shall be developed in such a manner that performance and effectiveness can be measured.

(2) These standards shall comply with the rules and shall encourage both quality of care and quality of life.

R432-151-6. Program Standards.

(1) Each resident shall receive individualized treatment, which includes at least the following:

(a) Provision of treatment services, regardless of the source(s) of financial support;

(b) Provision of services in the least restrictive environment possible;

(c) Provision of an individualized resident care plan which has regular periodic review;

(d) Invitation for active participation by residents and their responsible parent, relative, friend, or guardian in the development of resident care plans;

(e) Competent, qualified, and experienced professional staff to implement and supervise the resident care plan.

(2) The facility shall develop policies to assure that services are provided with sufficient resources (such as program funds, staff, equipment, supplies, and space) to meet resident needs.

(3) The facility shall maintain programs, beds, and services that are available 24 hours a day, seven days a week.

(4) Written policies and procedures shall define what action is to be taken when maladaptive behavior exceeds criteria for program participation.

(5) Services not directly provided within the facility must have written agreements or arrangements to obtain such services whenever they are authorized or prescribed. Such services may include special assessments or therapeutic treatment programs.

(6) The facility shall establish written policies and procedures which include:

(a) Admission criteria which describe selection of the population served, including age groups and other relevant characteristics;

(b) The intake process;

(c) Criteria for resident participation in programs;

(d) Specific treatment modalities;

(i) Identify services provided in the modality; and

(ii) Identify goals and objectives of the modality;

(e) Crisis intervention and emergency services;

(f) Use of involuntary medication or physical restraints;

(g) Restrictive procedures;

(h) Methods to collect, process, report, and disseminate resident assessment data;

(i) Case coordination and case management;

(j) Development and periodic review of plans of treatment;

(k) Discharge planning;

(l) Staff in-service needs;

(m) Responsibility for medical and dental care;

(n) Provisions for family participation in the treatment program;

(o) Arrangements for clothing, allowances, and gifts;

(p) Provisions to allow resident departure from the facility as part of activities offered in the program;

(q) When the resident leaves the facility against medical advice.

(7) The facility shall develop job descriptions to delineate the roles and responsibilities of team members and to establish supervisory and organizational relationships.

(8) The professional staff shall determine qualifications required to assume specific responsibilities. Individual

personnel files shall contain documentation to verify whether health care staff meet state and local requirements for certificates, licenses, or registrations.

(9) There shall be a written and dated consent form signed by the resident or the resident's legal guardian for the use of, participation in, or performance of the following:

(a) Surgical procedures;

(b) Procedures that place the resident at risk;

(c) Transfer;

(d) Other procedures where consent is required by law.

(10) The resident shall be allowed visitors, regardless of age, unless such visits are clinically contraindicated, and if so, the reasons must be documented by the professionals who made this decision.

(11) Areas shall be provided for residents to visit in private, unless such privacy is contraindicated and documented in the resident's record and plan of treatment.

R432-151-7. Environment.

(1) Each facility shall establish an environment to enhance a positive self-image of residents and preserve individual dignity.

(a) Programs which assume responsibility for security and yet maintain an open-door policy are encouraged.

(b) Treatment programs shall be conducted without disruption of, or disturbance to, other facility programs.

(2) The facility shall be designed, constructed, equipped, and operated to promote efficient and effective conduct of treatment programs and to protect health and safety both for the residents served and for the staff.

(3) The facility shall meet environmental needs of the residents.

(4) The facility shall provide adequate space for the program to carry out its goals.

(a) When resident needs or program goals include outdoor activity, areas and facilities shall be provided.

(i) Natural terrain and community resources may provide options for outdoor activities.

(ii) Other areas appropriate to resident activities may include an auditorium, stage, swimming pool, canteen, etc. (iii) Activities may take place within the community setting in affiliation with churches, schools, organizations, etc.

(b) Content of program plans shall describe circumstances for use of available resources, and when necessary, have written affiliation agreements.

(c) Recreational equipment must be maintained in working order.

(5) Design, location, and furnishings of program areas shall accommodate residents and visitors. The need for privacy or support from staff as well as goals of the facility programs shall be taken into consideration.

(6) Clocks and calendars shall be provided to promote awareness of time and season.

(7) Books, current magazines, and daily newspapers shall be available to the residents.

(8) Areas shall be available for a range of social activities from two-person conversations to group activities. Areas shall also be available where a resident can be alone when this is not in conflict with the individual's treatment program.

(9) Noise-producing equipment and appliances shall not interfere with other activities or the therapeutic program. Written policies and procedures shall address the use and location of this equipment such as radios, televisions, record players, musical instruments, tape players, etc.

(10) Space and general equipment shall be provided for table games and pursuit of individual hobbies.

(a) Equipment and games shall be accessible to residents.

(b) Hobby supplies, as well as arts and crafts materials used in therapeutic activity, shall be available according to residents' cultural or educational backgrounds and needs under the management of Activity Services.

(11) Dining areas shall be pleasant and promote a congenial, relaxed atmosphere.

(a) Dining rooms shall be supervised during meals by staff personnel to provide assistance and to ensure that each resident receives adequate amounts and varieties of foods.

(b) Food shall be served in an attractive and appetizing manner, as planned in menus, and at realistic mealtimes.

(c) Menus shall provide color and variety in meeting nutritional needs.

(d) Provisions shall be made in the menus and dining areas to cover special occasions, holidays, and weekends.

(e) The facility shall make available an area which allows resident access for preparation and serving of food, beverages, or snacks. Facility policy shall establish guidelines for resident use, such as leisure time activity, or, to offer rehabilitation or habilitation in a therapeutic environment.

(f) Bedrooms shall be assigned on the basis of the resident's need for group support, privacy, or independence.

(i) Rooms shall have doors for privacy, and an appropriate bed with mattress, pillow, fresh linens, and blankets furnished by the facility.

(ii) There shall be closet or storage space for personal items and clothing which the resident has and shall be allowed to use or wear.

(iii) The selection of residents assigned to a room shall be appropriate to the ages, development, and needs of the resident and to the goals of the program.

(iv) When rooms are shared, individual privacy must be provided by curtains, by partitions or by furniture arrangement.

(v) Provision shall be made for residents who need extra sleep, who have sleep disturbances, or who need greater privacy.

(g) Residents shall be encouraged to maintain their sleeping and living areas and perform other day-to-day housekeeping activities to support non-impaired functioning, or to learn rehabilitation or habilitation responsibilities. Staff assistance and equipment shall be provided as needed.

(h) Residents shall be allowed to keep and display personal belongings and to add personal decorations to their rooms. The facility shall have written policies to govern use of decorative displays.

(i) Grooming and personal hygiene articles shall be readily accessible and shall be appropriate to the age, behavior, and clinical status of the resident.

(i) If access to potentially dangerous grooming aids or other personal items is contraindicated, a resident's personal articles may be kept under lock and key by the staff.

(ii) The professional staff must explain to the resident the conditions under which the articles may be used.

(iii) The treatment plan must also incorporate such restrictions and use.

(j) Good standards for grooming and personal hygiene including bathing, oral hygiene, care of hair and nails, and toilet habits shall be taught or maintained. Individual resident goals shall be written in the plans of treatment.

(k) Clothing shall be appropriate.

(i) Clothing shall be in good repair, of proper size, suited to the climate, and similar to clothing worn in the community.

(ii) Training and assistance in the selection and proper care of clothing shall be available as needed.

(iii) Training goals must be incorporated into the resident care plan.

(iv) An adequate amount of clothing shall be available to permit laundering, cleaning, and repair.

(l) Toilet and bathing facilities shall afford privacy with doors, toilet seats, partitions, and shower curtains.

(m) There shall be opportunity to participate in social events with persons of the opposite sex under adequate supervision.

(n) The resident shall retain possession of personal items such as tobacco products, cosmetics, watches, appliances, and money, except where possession may be restricted in the resident care plan.

(o) The resident shall have access to a personal funds account maintained by the business office or as specified by facility policy. Personal resource funds which a resident may have should be kept in this account.

R432-151-8. Construction and Physical Environment.

Refer to R432-5, Nursing Facility Construction.

R432-151-9. Administration and Organization.

(1) Program Director.

(a) The program director shall be a qualified health professional with a minimum of one year's experience in an established program for treatment of mental disease.

(b) The program director shall have a degree in administration, psychology, social work, nursing, or medicine and be licensed, certified or registered by the Utah Department of Commerce.

(c) The program director shall be appointed in writing by the governing body, and shall be accountable for the overall function of the program.

(d) The program director shall be accountable, whether by performance or by delegation, for the following functions:

(i) Develop written short-term and long-term goals for the treatment program;

(ii) Develop written policy and procedures, review them at least annually, and revise as necessary. Dates of review shall be documented;

(iii) Utilize quality assurance methods to assess efficiency and effectiveness of the program;

(iv) Supervise the development and implementation of each resident's individualized resident care plan;

(v) Supervise appropriate delivery of program modalities and services;

(vi) Integrate various aspects of the treatment program;

(vii) Maintain thorough clinical records for each resident;

(viii) Establish periodic reviews of each resident care plan;

(ix) Provide orientation for each new employee to acquaint them with the philosophy, organization, practices, and goals of the treatment program;

(x) Provide in-service training for any employee who has not achieved the desired level of competence;

(xi) Promote continuing education opportunities for all employees to update and improve their skills.

(2) Professional Staff.

(a) The facility shall have administrative, qualified health care professional, and support staff available to assess and address resident needs within its scope of services.

(b) Qualified professional staff includes psychiatrists, physicians, clinical psychologists, social workers, licensed nurses, and other health care professionals in sufficient number to provide services offered by the facility.

(c) When qualified professional staff members other than nursing staff are not available on a full-time basis, they shall be available on a part-time basis or by contract agreement to fulfill the requirements and needs of the treatment programs offered.

(d) The professional staff shall determine what qualifications are required to assume specific responsibilities.

(i) All members of the treatment team who have been assigned specific responsibilities shall be qualified for that position by training and experience.

(ii) Services shall be supervised by qualified, licensed personnel.

(e) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(i) The facility shall maintain documentation and copies of the license, certification, or registration for Department review.

(ii) Failure to ensure that employees are current for licensure, certification or registration may result in sanctions to the facility license.

(f) The facility shall have a Health Surveillance policy which conforms with R432-150-10(4).

(3) Orientation.

(a) These rules shall apply in addition to R432-150-10(5).

(b) All new employees shall be oriented to job requirements, personnel policies, and job training beginning the first day of employment.

(c) Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first three months of employment.

(d) New employees shall receive orientation to the following:

(i) Administration, organization, policies and procedures, job training, responsibilities, and philosophy of the treatment program;

(ii) Resident rights;

(iii) Safety and security procedures for fire, disaster, and AWOL;

(iv) Symptoms of residents with maladaptive behaviors;

(v) Training how to respond appropriately to residents' sexual behavior;

(vi) Suicide precautions;

(vii) Procedures for first aid and medical emergencies;

(viii) Medical recording or charting; medication sheets if pertinent to the job assignment;

(ix) Reporting abuse, neglect and exploitation; and

(x) Quality assurance objectives.

(e) Registered nurses and licensed practical nurses will receive additional orientation to the following:

(i) Concepts of treatment for residents with mental disease;

(ii) Roles and functions of nurses in treatment programs for residents with mental disease;

(iii) Nursing policy and procedure manuals;

(iv) Psychotropic medications.

(4) Staff growth and development.

(a) These rules shall apply addition to R432-150-10(6).

(b) In-service sessions shall be planned in advance and shall be held at least quarterly.

(c) In-service education shall be available to all employees.

(i) Aides shall receive at least the following training:

(A) Basic health - to learn nursing skills in non-complicated nursing situations;

(B) Basic first aid;

(C) Communications;

(D) Introduction to human services;

(E) Understanding behavior - the resident's and the staff's; appropriate and inappropriate behaviors; responsibility to report undesirable behaviors to supervisors.

(ii) Licensed professional staff shall receive continuing education to keep informed of significant new developments and skills.

(iii) The facility should make use of opportunities outside the facility, such as workshops, institutes, seminars, and formal classes to supplement the facility's program of continuing education.

R432-151-10. Resident Evaluation.

(1) Evaluation - Recognition of mental health needs and intervention/treatment for residents should be considered, documented, and implemented.

(2) At least two of the following criteria, which can be verified through medical record documentation, shall be used to identify whether there is a need for evaluation of mental disease:

(a) When there are marked changes in the person's behavior;

(b) When behavioral and socially functional strengths become weaknesses, and to what extent this has occurred;

(c) When the mood of a resident is prolonged, exaggerated, and not in keeping with the circumstances of the attending situation and environment;

(d) When these abnormal exaggerated states extend over unusually long periods of time, whether lasting for days, weeks, or months; criteria for abnormal behavior involves depth, duration, and situations;

(e) When observations of behavior take into account the resident's postures, gestures, tone of voice, walk, ideas expressed, intellectual symptoms, emotions/emotional responses, and degree of motor activity;

(f) When there are special supervisory precautions recommended for the health and safety of the resident (situations such as suicidal; runaway; careless smoker; history of non-compliance with medication).

(3) Service patterns shall be determined using the Utah Level of Care Survey. The outcome may affect whether the facility should be considered an MDF.

R432-151-11. Admission.

(1) This section shall apply in addition to R432-150-13.

(2) Admission shall be determined by treatment program criteria and the needs of the residents.

(a) Admission criteria shall be clearly stated in writing in facility policies.

(b) Acceptance of a resident for treatment shall be based on the following:

(i) The resident requires treatment appropriate to the environmental restrictions and level of care provided by the facility;

(ii) The treatment required is appropriately provided within the program;

(iii) Alternative placement for less intensive care or less restrictive environment is not available.

(c) Admitting personnel will inform applicants during the intake process about the following:

(i) Services that are available;

(ii) Activities and goals of the treatment program;

(iii) Information shall be obtained during the intake process to facilitate development of a preliminary resident care plan.

R432-151-12. Resident Rights.

(1) These rules shall apply in addition to R432-150-12 and shall provide emphasis to resident rights.

(2) The facility shall support and protect the resident's basic rights as follows:

(a) being allowed to take responsibility for oneself;

(b) to be free to exercise judgement;

(c) to exist as an individual;

(d) to preserve unimpaired functions.

(3) These rights shall include the following:

(a) The resident has the right to receive treatment that does not create irreversible conditions.

(b) Residents shall be allowed to conduct private telephone conversations with family and friends.

(i) When therapeutic indications necessitate restrictions on visitors, telephone calls, or other communications, those restrictions shall be evaluated for therapeutic effectiveness by responsible staff at least every seven days.

(ii) Evaluations and determinations will be documented.

(iii) When limitations on visitors, telephone calls, or other communications are indicated for practical reasons due to expense of travel or long distance telephone calls such limitations shall be determined with participation of the resident and other persons involved.

(c) Each resident shall have the right to request the opinion of a consultant at his or her expense, or to request an in-house review of the individual treatment plan.

(d) Each resident shall be informed of his or her rights in a language and vocabulary the resident should understand.

(e) The resident shall have the right to be fully informed about the following:

(i) Rights and responsibilities of residents, including rules governing resident conduct and types of infractions that can result in restrictions or discharge.

(ii) Staff members who are responsible for resident care, their professional status, their staff relationship, and reasons for changes in staff;

(iii) Type of care, procedures, and treatment the resident will receive;

(iv) Use and disposition of special observation and audiovisual techniques;

(v) Risks, side effects, and benefits of medications and treatment procedures used;

(vi) Alternate treatment procedures that are available;

(vii) The right to refuse specific medications or treatment procedures and medical consequences as a result of such refusal;

(viii) Costs to be borne by the resident or family, and itemized cost, whenever possible, of services or treatment rendered;

(ix) Sources of reimbursement and any limitations placed on duration of services.

(f) The resident shall be informed immediately whenever a right is taken away and why. The circumstances to regain the right shall also be explained.

(g) Residents shall have the right to free exercise of religious beliefs and to participate in religious worship services. No individual will be coerced or forced into engaging in any religious activity.

R432-151-13. Resident Care Plans.

(1) These rules shall apply in addition to R432-150-13 and shall provide emphasis regarding resident care plans.

(2) The written resident care plan shall be based on a complete assessment of each resident, and should include the resident's physical, emotional, behavioral, social, recreational, legal, vocational, and nutritional needs.

(a) The facility staff shall obtain, review, and update assessment data.

(b) When information has been obtained by other facilities or agencies prior to the resident's admission, reports should be obtained which cover the required assessments.

(3) The preliminary resident care plan shall be completed within seven days of admission.

(a) Plans must be reviewed on a monthly basis for the first three months; thereafter at intervals determined by the interdisciplinary team but not to exceed every other month at approximately 60-day intervals.

(b) When a resident is discharged and readmitted, a new resident care plan must be developed.

(4) A physician or nurse practitioner shall assess each resident's physical health within five days prior to or within 48 hours after admission.

(a) A history and physical exam shall be done which includes appropriate laboratory work-up;

(b) a determination of the type and extent of special examinations, tests, or evaluations needed; and

(c) when indicated, a thorough neurological exam.

(5) A written comprehensive health assessment, compiled by professional staff members, shall include the following:

(a) Alcohol and drug history including the following:

(i) drugs used in the past;

(ii) drugs used recently, especially within the preceding 48 hours;

(iii) drugs of preference;

(iv) frequency with which each drug is used;

(v) route of administration of each drug;

(vi) drugs used in combination;

(vii) dosages used;

(viii) year of first use of each drug;

(ix) previous occurrences of overdose, withdrawal, or adverse drug reactions;

(x) history of previous treatment received for alcohol or drug abuse;

(b) Degree of physical disability and indicated remedial or restorative measures including:

(i) nutrition,

(ii) nursing,

(iii) physical medicine, and

(iv) pharmacologic intervention;

(c) Degree of psychological impairment and appropriate measures to be taken to relieve treatable distress or to compensate for non-reversible impairments;

(d) Capacity for social interaction and what appropriate rehabilitation or habilitation measures are to be undertaken, including group living experiences and other activities to maintain or increase the individual's capacity to independently manage daily living.

(e) A written emotional or behavioral assessment of each resident shall be entered in the resident's record. The assessment shall include the following:

(i) A history of previous emotional or behavioral problems and treatment;

(ii) The resident's current level of emotional and behavioral functioning;

(iii) A psychiatrist's evaluation within 30 days prior to or within one week after admission;

(iv) When indicated, a mental status assessment appropriate to the age of the resident;

(v) When indicated, psychological assessments which include intellectual and personality testing;

(vi) Other functional assessments such as language, self-care ability, and visual-motor coordination.

(f) A written social assessment of each resident shall include information about the following:

(i) Home environment;

(ii) Childhood history;

(iii) The resident's family circumstances; the current living situation; social, ethnic, and cultural background; sexual abuse;

(iv) Resident and family strengths and weaknesses;

(v) Military service history if applicable;

(vi) Financial resources;

(vii) Religion;

(g) A written activities assessment of each resident shall include information about current skills, talents, aptitudes, interests, and attitudes.

(h) A nutritional needs assessment shall be conducted and documented.

(i) When appropriate, a written vocational assessment of the resident shall include:

(i) Previous occupations including brief descriptions of the type of work, duration of employment, reasons for leaving, etc.;

(ii) Education history, including academic or vocational training;

(iii) Past experiences and attitudes toward work, present motivations, areas of interest, and possibilities for future education, training, or employment.

(j) When appropriate, a written assessment of the resident's legal status shall include:

(i) A history with information about competency, court commitment, prior criminal convictions, any pending legal actions;

(ii) The urgency of the legal situation;

(iii) How the individual's legal situation may influence treatment.

(k) The facility shall develop procedures which describe early intervention for symptoms that are life-threatening, are indicative of disorganization or deterioration, or may seriously affect the treatment process.

(l) The resident care plan shall comply with R432-150-13(4) and include the following:

(i) Treatment goals expressed as standards of achievement;

(ii) Services or treatment to be provided (based on assessments), at what intervals, and by whom;

(iii) Nutritional requirements;

(iv) Security precautions;

(v) Precautions and interventions for maladaptive behaviors;

(vi) Restrictions or loss of privileges, if any; factors to regain privileges;

(vii) Date the plan was initiated and dates of subsequent reviews;

(viii) Discharge planning.

R432-151-14. Active Treatment.

(1) Active treatment programs shall provide services reasonably expected to improve the resident's condition.

(2) Active Treatment services shall be offered in an environment that encompasses as many physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components as necessary to achieve this purpose.

(3) Active treatment shall fulfill these objectives:

(a) To modify or minimize symptoms and conditions contributing to the need for treatment;

(b) To promote humane conditions, such as abilities to relate constructively, to care, and to fulfill human needs (affection, recognition, self-esteem, self-realization) within individual capabilities.

(c) If the planned or prescribed activities are primarily diversional in nature and thus provide only some social or recreational outlet for the resident, they shall not be regarded as active treatment to improve the resident's condition.

(d) Administration of a drug or drugs expected to significantly alleviate a resident's symptoms shall not of itself constitute active treatment.

(e) An active treatment program shall include the following components:

(i) Supervision by a physician.

(ii) An interdisciplinary professional evaluation.

(A) that is completed preferably before admission to the facility and definitely before the facility requests payment;

(B) that consists of complete medical diagnosis, social and psychological evaluations, and evaluation of the individual's need for psychiatric care;

(C) that is made by a psychiatrist (physician), a social worker, and other professionals, at least one of whom is qualified by at least one year of experience in treatment of residents with mental disease.

(iii) Periodic reevaluation (preferably on a quarterly basis, but not to exceed six month intervals) medically, socially, and psychologically by the staff involved in carrying out the resident's individual plan of care. This reevaluation must include review of the individual's progress toward meeting the plan objectives, appropriateness of the plan of care, assessment of continuing need for institutional care, and consideration of alternative methods or placement for care.

(iv) An individualized written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences, or therapies necessary for the individual to reach those goals or objectives.

(v) A post-institutional plan, as part of the individual plan of care, developed by the interdisciplinary team prior to discharge. This plan must include considerations for follow-up services, protective supervision if necessary, and other services available as needed in the resident's new environment.

(vi) The resident's regular participation in professionally developed and supervised activities, experiences, or therapies in accordance with the resident's individualized plan of care.

R432-151-15. Special Treatment Procedures.

(1) The facility shall identify special treatment procedures that require justification for use, and shall develop standards governing the use of these procedures consistent with resident rights and facility policy.

(2) Standards must include:

(a) Use of seclusion and time out;

(b) Prescription and administration of drugs;

(c) Use of involuntary medication;

(d) Use of procedures that involve physical risk for the resident;

(e) Use of procedures to treat maladaptive behaviors other than use of painful stimuli.

(3) Use of painful stimuli is not allowed.

(4) Indications for use of special treatment procedures shall be documented in the resident's record.

R432-151-16. Security.

(1) The facility shall follow its established written procedure in the event of resident AWOL or elopement so that the resident is returned to the facility in as short a time as possible.

(2) In all cases of AWOL, the program director, family or significant others, and appropriate agencies outside the facility (police, highway patrol, etc.) shall be notified according to written facility policy and procedure.

(3) There shall be documentation and review of all aspects of the AWOL.

(a) Notation of the AWOL must be in the resident record with more detail in an incident report kept by the administrator.

(b) These reports shall be made available for Department review upon request.

(4) Facility policy shall define the staff's escort responsibility, conduct, and liability.

R432-151-17. Industrial Therapy.

(1) Job placement may be an element of resident treatment and may be offered to provide therapeutic benefit on an individual basis.

(2) The goal of the industrial program shall include development of the resident's skills to deal with situations and problems which happen on the job, to accept responsibility, and to perform under direction of supervisors.

(3) No resident shall work as a substitute for staff.

(4) The job placement shall comply with local, state, and federal laws and regulations.

(5) Compensation.

(a) Residents who have a job shall receive pay commensurate with the economic value of the work.

(b) The resident shall receive appropriate compensation for labor performed away from the facility.

(c) Residents may be encouraged to perform personal housekeeping tasks without compensation as part of a rehabilitation or habilitation program.

R432-151-18. Transfer Agreements.

(1) This section shall apply in addition to R432-150-22.

(2) Each referral to and from the facility shall be governed by criteria that the most effective treatment in the least restrictive environment shall be available and accessible to a resident.

(a) The staff shall assess resident needs and provide necessary services within the facility according to its treatment capabilities.

(b) Services of other facilities shall be utilized when the resident requires care beyond the capabilities of the facility.

(3) Transfer agreements between facilities shall be obtained.

(a) Continuity of resident care shall be a joint responsibility between the facilities involved.

(b) Continuity of resident care is assured by providing:

(i) Reason(s) for the referral;

(ii) Information about the resident such as current treatment, medications, behavior, special precautions;

(iii) Current treatment objectives;

(iv) Suggestions for continued coordination between the receiving and referring facility;

(v) Information whom to contact, such as significant others or treatment coordinator.

(4) Residents shall not be transferred to another facility without prior contact with that facility. The referring treatment coordinator shall contact the receiving facility immediately or within 24 hours to insure temporary placement or admission.

(5) All information pertaining to clients shall be kept confidential and disclosed only by authorized staff to others directly involved in the resident's care and treatment except under the following conditions:

(a) When a resident's written informed consent is obtained to share specific information with appropriate parties;

(b) When an emergency exists with reason to believe there is imminent danger to the resident or others;

(c) When there is a court order to produce specific records;

(d) When the law enforcement agency requires release of specific pertinent information.

R432-151-19. Physician Services.

(1) This section shall apply in addition to R432-150-16.

(2) A physician should be responsible to monitor physical or medical needs; a psychiatrist must be responsible to monitor mental health needs and medications prescribed for these needs.

(3) General requirements.

(a) Each resident in need of psychiatric services shall be under the care of a psychiatrist licensed to practice in Utah.

(b) Each resident shall be permitted to choose a personal psychiatrist.

(c) Psychiatrist responsibilities.

(i) A psychiatrist must complete a psychiatric evaluation within 30 days prior to, or within one week after, admission.

(ii) Requirements for psychiatrist visits shall be the same as requirements for physician visits in R432-150-16. EXCEPT:

(A) Whenever possible, visits should be made on alternating months from physician visits.

(B) The psychiatrist shall see the resident whenever necessary but at least every other month at approximately 60-day intervals.

(C) The psychiatrist may have the option to establish and follow an alternate schedule of visits, but visits must not exceed four month intervals.

(D) A progress note shall be written in the resident's record at each visit.

R432-151-20. Nursing Services.

(1) Nursing services shall be available to residents who require such services.

(2) There shall be nursing staff available according to Table 1 to meet medical needs.

(a) There shall be 24-hour licensed nurse coverage.

(b) In a skilled nursing facility, a registered nurse shall be on duty at least sixteen hours per 24-hour period seven days a week to plan, assign, supervise or provide, and evaluate nursing care needs of the residents.

(3) All prescribed medications shall be administered by licensed personnel.

(4) In an intermediate care facility, if the health services supervisor is a licensed practical nurse, the registered nurse consultant shall be contacted within three days of a new admission to review the resident care plan.

(5) Schedules shall be maintained to indicate hours worked in the treatment program by regularly assigned and relief registered nurses, licensed practical nurses, and aides. The facility shall retain staff schedules and payroll records for at least a 12-month period.

(6) Aides performing housekeeping, dietary, or other functions shall maintain time records reflecting actual time spent in nursing care and time spent in other tasks. Time spent in other tasks will not be included in nursing care staffing ratios.

(7) Table 1 represents the minimum acceptable standards for hours of nursing care; additional staffing time may be necessary to accommodate variables such as staff illness or vacation, resident census, or status and behavior of residents.

TABLE 1

HOURS OF NURSING CARE PER SKILLED AND INTERMEDIATE LEVEL RESIDENT

Type of Resident	Total Nursing Hours per Resident per 24 hrs. (RN + LPN + Aide)	Licensed Nursing Hours per resident per 24 hrs. (RN + LPN only)
SKILLED	2.5 (150 minutes)	30% (45 minutes)(a)
INTERMEDIATE	2.0 (120 minutes)	30% (36 minutes)(a)

(a) Shall not include director of nursing or health services supervisor in a facility with a resident census over 60.

R432-151-21. Resident Records.

(1) These rules shall apply in addition to R432-150-25 and shall provide emphasis regarding resident records.

(2) Contents of the resident record shall describe the resident's physical and mental health status at the time of admission, the services provided, the progress made, and the resident's physical and mental health status at the time of discharge.

(3) The resident record shall contain the following:

(a) Identifying data that is recorded on standardized forms:

(i) the resident's name;

(ii) home address;

(iii) home telephone number;

(iv) date of birth;

(v) sex;

(vi) race or ethnic origin;

(vii) next of kin;

(viii) education;

(ix) marital status;

(x) type and place of last employment;

(xi) date of admission;

(xii) legal status, including relevant legal documents;

(xiii) date the information was gathered; and names and signatures of the staff members gathering the information.

(b) Information for review and evaluation of treatment provided to the resident.

(c) Documentation of resident and family involvement in the treatment program.

(d) Prognosis.

(e) Information on any unusual occurrences, such as treatment complications; accidents or injuries to or inflicted by the resident, procedures that place the resident at risk, AWOL.

(f) Physical and mental diagnoses using a recognized diagnostic coding system.

(g) Progress notes written by the physician, psychiatrist. nurse, and others involved in active treatment.

(i) progress notes should contain an on-going assessment of the resident.

(ii) Progress notes shall be written in the resident's record by each professional discipline at least monthly for the first three months and every other month thereafter at approximately 60 day intervals.

(iii) Progress notes shall be summaries of notes written at more frequent intervals, as determined by the condition of the resident or by facility policy, including the following:

(A) Documentation which supports implementation of the resident care plan and the resident's progress toward meeting these planned goals and objectives;

(B) Documentation of all treatment and services rendered to the resident;

(C) Chronological documentation of the resident's clinical course;

(D) Descriptions of changes in the resident's condition;

(E) Descriptions of resident response to treatment, the outcome of treatment, and the response of significant others to these changes.

(iv) All entries involving subjective interpretation of the resident's progress should be supplemented with a description of the actual behavior observed.

(v) Efforts should be made to secure written progress reports from outside sources for residents receiving services away from the facility.

(h) Reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(i) Correspondence and signed and dated notations of telephone calls concerning the resident's treatment.

(j) A written plan for discharge including information about the following:

(i) Resident's preferences and choices regarding location and plans for discharge;

(ii) Family relationships and involvement with the resident;

(iii) Physical and psychiatric needs;

(iv) Realistic, basic financial needs;

(v) Housing needs;

(vi) Employment needs;

(vii) Educational/vocational needs;

(viii) Social needs;

(ix) Accessibility to community resources;

(x) Designated and documented responsibility of the resident or family for follow-up or aftercare.

(k) A discharge summary signed by the physician and entered into the resident record within 60 calendar days from the date of discharge;

(i) In the event a resident dies, the discharge statement shall include a summary of events leading to the death.

(ii) Transfer to another facility for more than 72 hours shall cause the resident record to be closed with a discharge summary.

(A) A new record shall be initiated at the time of readmission.

(B) If the interval from discharge to readmission is less than 30 days, previous assessments may be reviewed and a copy brought forward from the prior record. The assessment must be identified either as an original or as a copy, and include updated information.

(l) Reports of all assessments.

(m) Consents for release of information, the actual date the information was released, and the signature of the staff member who released the information:

(i) The facility may release pertinent information to

personnel responsible for the individual's care without the resident's consent under the following circumstances:

(A) In a life-threatening situation;

(B) When an individual's condition or situation precludes obtaining written consent for release of information;

(C) When obtaining written consent for release of information would cause an excessive delay in delivering treatment to the individual.

(ii) When information has been released under the conditions listed in R432-151-21(3)(m), the transaction shall be entered into the resident's record, including at least the following:

(A) The date the information was released;

(B) The person to whom the information was released;

(C) The reason the information was released;

(D) The reason written consent for release of information could not be obtained;

(E) The specific information released;

(F) The name of the person who released the information.

(iii) The resident shall be informed of the release of information as soon as possible.

(n) Pertinent prior records available from outside sources.

(4) The confidentiality of the records of substance abuse residents shall be maintained according to 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

R432-151-22. Quality Assurance.

(1) This section shall apply in addition to R432-150-11.

(2) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated on at least a quarterly basis by an interdisciplinary quality assurance committee.

(3) A written report of findings from each meeting shall be submitted to the administrator and shall be available for review by the Department.

(4) Committee composition.

(a) Members of the quality assurance committee shall be appointed by name in writing by the administrator for a given term of membership.

(b) The committee shall have a minimum of three members with representation from at least three different licensed health care professions.

(5) Methodology for evaluation includes:

(a) Review and evaluation of active and closed resident records to assure that established policies and procedures are being followed;

(b) Facility policy and procedure will determine the method(s) to be followed for selection and review of the representative sample of active and closed records;

(c) Review and evaluation whether needed services were provided;

(d) Review and evaluation of coordination of services whenever appropriate through documentation of written reports, telephone consultation, or case conferences; and

(e) Review and evaluation of the resident plans of treatment for content, frequency of updates, and whether progress notes correspond to goals stated in the resident care plan.

R432-151-23. Housekeeping.

Housekeeping services shall comply with R432-150-26.

R432-151-24. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

March 3, 1995	**26-21-5**
Notice of Continuation January 20, 1998	**26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-152. Mental Retardation Facility.
R432-152-1. Legal Authority.

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

R432-152-2. Purpose.

It is the purpose of the rule to meet the intent of the Legislature as expressed in 26-21-13.5.

R432-152-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule. In addition, the following special definitions apply:

(a) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

(b) "Developmental Period" means the period between conception and the 18th birthday.

(c) "Direct Care Staff" means personnel who provide care, training, treatment or supervision of residents.

(d) "QMRP" means a Qualified Mental Retardation Professional as defined in 42 CFR 483.403(a), 1997.

R432-152-4. Licensure.

These rules apply to all Intermediate Care Facilities for the Mentally Retarded licensed prior to July 1, 1990, pursuant to 26-21-13.5.

R432-152-5. Construction and Physical Environment.

Intermediate Care Facilities for the Mentally Retarded shall be constructed and maintained in accordance with R432-5 Nursing Facility Construction.

R432-152-6. Governing Body and Management.

(1) The licensee shall identify an individual or group to constitute the governing body of the facility.

(2) The governing body shall:

(a) exercise general policy, budget, and operating direction over the facility; and

(b) set the qualifications, in addition to the requirements of Title 58, Chapter 15, for the administrator of the facility.

(3) The licensee shall comply with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

(4) The licensee shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce as a nursing home administrator. The administrator shall supervise no more than one licensed nursing care facility or mental retardation facility.

(a) The administrator shall be on the premises of the facility a sufficient number of hours in the business day, and at other times as necessary, to permit attention to the management and administration of the facility.

(b) The administrator shall designate, in writing, the name and title of a person to act as administrator in any temporary absence of the administrator. This designated person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(5) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review. The job description must include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) function as liaison between the licensee, qualified mental retardation professional, and other supervisory staff of the facility;

(c) respond appropriately to recommendations made by the facility committees;

(d) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(e) implement policies and procedures for the operation of the facility;

(f) hire and maintain the required number of licensed and non-licensed staff, as specified in these rules, to meet the needs of clients;

(g) maintain facility staffing records for at least the preceding 12 months;

(h) secure and update contracts for required professional and other services not provided directly by the facility;

(i) verify all required licenses and permits of staff and consultants at the time of hire or effective date of contract;

(j) review all incident and accident reports and take appropriate action.

(6) The administrator, QMRP, and facility department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(a) The administrator or designee shall conduct and document periodic employee performance evaluations.

(b) All personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(7) The administrator shall establish policies and procedures for health screening that meet R432-150-10-4.

R432-152-7. Client Rights.

(1) The administrator is responsible to ensure the rights of all clients. The administrator or designee shall:

(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;

(b) inform each client or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, voice grievances, and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(f) ensure that clients are free from unnecessary drugs and

physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(n) permit a married couple both of whom reside in the facility to reside together as a couple.

(2) The administrator shall establish and maintain a system that assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(a) The client's financial record shall be available on request to the client or client's legal guardian.

(b) The licensee must ensure that all monies entrusted to the facility on behalf of clients are kept in the facility or are deposited within five days of receipt in an insured interest-bearing account in a local bank, credit union or savings and loan association authorized to do business in Utah.

(c) When the amount of a client's money entrusted to the facility exceeds $150, all money in excess of $150 must be deposited in an interest-bearing account as specified in R432-152-7(2)(b) above.

(d) Upon discharge of a client, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility must be surrendered upon demand and those kept in an interest-bearing account must be obtained and surrendered to the client in a timely manner.

(e) Within 30 days following the death of a client, except in a medical examiner case, all money and valuables of that client which have been entrusted to the licensee must be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. If a client dies without a representative or known heirs, the licensee must immediately notify in writing the local probate court and the Department.

(3) The administrator must promote communication, and encourage participation of clients, parents and guardians in the active treatment process. Facility staff shall:

(a) promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from clients' families and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to the client, such as family, close friends, legal guardians and advocates, at any reasonable hour, without prior notice, consistent with the right of the client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(f) notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(4) The administrator is responsible to develop and implement written policies and procedures that prohibit abuse, neglect, or exploitation of clients.

(a) Any person, including a social worker, physician, psychologist, nurse, teacher, or employee of a private or public facility serving adults, who has reason to believe that any disabled or elder adult has been the subject of abuse, emotional or psychological abuse, neglect, or exploitation shall immediately notify the nearest peace officer, law enforcement agency, or local office of Adult Protective Services pursuant to Section 62A-3-302.

(i) The administrator must document that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(ii) The administrator is responsible to report the results of all investigations within five working days of the incident. If the alleged violation is verified, the administrator shall take appropriate corrective action.

(iii) The administrator or designee shall plan and document annual inservice training of all staff on the reporting requirements of suspected abuse, neglect, and exploitation.

(b) A licensee shall not retaliate, discipline, or terminate an employee who reports suspected abuse, neglect, or exploitation for that reason alone.

R432-152-8. Facility Staffing.

(1) A Qualified Mental Retardation Professional must integrate, coordinate and monitor each client's active treatment program.

(2) Each client shall receive the professional services required to implement the active treatment program defined by each client's individual program plan.

(a) Professional program staff shall work directly with

clients and with other staff who work with clients.

(b) The licensee shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(c) Professional program staff shall participate in on-going staff development and training of other staff members.

(d) Professional program staff must be licensed and provide professional services in accordance with each respective professional practice act as outlined in Title 58. A copy of the current license, registration or certificate must be posted or maintained in employee personnel files.

(e) Those professional program staff designated as a human services professional who do not fall under the jurisdiction of state licensure, certification, or registration requirements, specified in Title 58, shall have at least a bachelor's degree in a human services field, including, but not limited to: sociology, special education, rehabilitation counseling, and psychology.

(f) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of R432-152-8(2)(d) are not required:

(i) except for qualified mental retardation professionals;

(ii) except for the requirements of R432-152-8(2)(b) of this section concerning the facility's provision of enough qualified professional program staff; and

(iii) as otherwise specified by State licensure and certification requirements.

(3) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing as follows:

(a) clients for whom a physician has ordered a medical care plan;

(b) clients who are aggressive, assaultive or security risks;

(c) more than 16 clients; or

(d) each unit of sixteen or fewer clients within a multi-unit building.

(4) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness and to handle emergencies in each defined residential living unit housing as follows:

(a) clients for whom a physician has not ordered a medical care plan;

(b) clients who are not aggressive, assaultive or security risks; or

(c) residential living units housing sixteen or fewer clients.

(5) Sufficient support staff must be available so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(6) Clients or volunteers may not perform direct care services for the facility.

(7) The licensee shall employ sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(a) Direct care staff shall meet the following minimum ratios of direct care staff to clients:

(i) for each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2 (2.5 hours per client per 24 hour period);

(ii) for each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4 (2.0 hours per client per 24 hour period);

(iii) for each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4 (1.25 hours per client per 24 hour period).

(b) When there are no clients present in the living unit, a responsible staff member shall be available by telephone.

(8) Each employee shall have initial and ongoing training to include the necessary skills and competencies required to meet the clients' developmental, behavioral, and health needs.

R432-152-9. Volunteers.

(1) Volunteers may be included in the daily activities with clients, but may not be included in the staffing plan or staffing ratios.

(2) Volunteers shall be supervised by staff and oriented to client's rights and the facility's policies and procedures.

R432-152-10. Services Provided Under Agreements with Outside Sources.

(1) If a service required under this rule is not provided directly, the licensee shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement shall:

(a) contain the responsibilities, functions, objectives, and other terms agreed to by both parties;

(b) provide that the licensee is responsible for assuring that the outside services meet the standards for quality of services contained in this rule.

(3) If living quarters are not provided in a facility owned by the licensee, the licensee remains directly responsible for the standards relating to physical environment that are specified in R432-5.

R432-152-11. Individual Program Plan.

(1) Each client shall have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessments required in R432-152-12(4); and

(b) designing programs that meet the client's needs.

(2) Interdisciplinary team meetings shall include the following participants:

(a) representatives of other agencies who may serve the client; and

(b) the client and the client's legal guardian unless participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan

that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by R432-152-12, and the planned sequence for dealing with those objectives.

(a) The program objectives shall:

(i) be stated separately, in terms of a single behavioral outcome;

(ii) be assigned projected completion dates;

(iii) be expressed in behavioral terms that provide measurable indices of performance;

(iv) be organized to reflect a developmental progression appropriate to the individual; and

(v) be assigned priorities.

(b) Each written training program designed to implement the objectives in the individual program plan shall specify:

(i) the methods to be used;

(ii) the schedule for use of the method;

(iii) the person responsible for the program;

(iv) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) the inappropriate client behavior, if applicable; and

(vi) provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(c) The individual program plan shall also:

(i) describe relevant interventions to support the individual toward independence;

(ii) identify the location where program strategy information, which shall be accessible to any person responsible for implementation, can be found;

(iii) include, for those clients who lack them, training in personal skills essential for privacy and independence, including toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs, until it has been demonstrated that the client is developmentally incapable of acquiring them;

(iv) identify mechanical supports, if needed, to achieve proper body position, balance, or alignment, including the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support;

(v) provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible; and

(vi) include opportunities for client choice and self-management.

(4) A copy of each client's individual program plan shall be made available to all relevant staff, staff of other agencies who work with the client or legal guardian.

(5) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(a) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(b) Except for those facets of the individual program plan that may be implemented only by licensed personnel, each client's individual program plan shall be implemented by all staff who work with the client.

(6) The facility must document, in measurable terms, data and significant events relative to the accomplishment of the criteria specified in individual client program plans.

(7) The individual program plan shall be reviewed at least by the qualified mental retardation professional and revised as necessary; including situations in which the client:

(a) has successfully completed an objective or objectives identified in the individual program plan;

(b) is regressing or losing skills already gained;

(c) is failing to progress toward identified objectives after reasonable efforts have been made; or

(d) is being considered for training towards new objectives.

R432-152-12. Comprehensive Functional Assessment.

(1) Within 30 days after admission, the interdisciplinary team must complete accurate assessments or reassessments as needed to supplement the preliminary evaluation referred to in R432-152-14(3).

(2) The comprehensive functional assessment shall take into consideration the client's age and the implications for active treatment and shall:

(a) identify the presenting problems and disabilities and, where possible, their causes;

(b) identify a client's specific developmental strengths;

(c) identify a client's specific developmental and behavioral management needs;

(d) identify a client's need for services without regard to the actual availability of the services needed;

(e) include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, auditory functioning, cognitive development, social development, adaptive behaviors and independent living skills necessary for a client to be able to function in the community, and as applicable, vocational skills.

(3) The comprehensive functional assessment of each client shall be reviewed annually by the interdisciplinary team and updated as needed repeating the process required in R432-152-14.

R432-152-13. Human Rights Committee.

(1) The facility shall designate and use a specially constituted committee or committees consisting of members of the facility staff, parents, legal guardians, clients as appropriate, qualified persons who have experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

(a) review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(b) insure that these programs are conducted only with the written informed consent of the client, parent, if the client is a minor, or legal guardian; and

(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

R432-152-14. Admissions, Transfers, and Discharge.

(1) The facility may only admit clients who need active treatment services.

(2) The facility shall base its admission decision on a preliminary evaluation of the client. The preliminary evaluation may be conducted or updated by the facility or an outside source and must determine that the facility can provide for the client's needs and that the client is likely to benefit from placement in the facility.

(3) A preliminary evaluation shall contain background information as well as current valid assessments of the following:

(a) functional developmental,

(b) behavioral status,

(c) social status, and

(d) health and nutritional status.

(4) Client transfers and discharges must comply with the requirements of R432-150-22.

R432-152-15. Client Behavior and Facility Practices.

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients.

(2) The policies and procedures shall:

(a) promote the growth, development and independence of the client;

(b) address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management to the extent possible;

(c) specify client conduct to be allowed or not allowed; and

(d) be available to all staff, clients, parents of minor children, and legal guardians.

(3) To the extent possible, clients shall participate in the formulation of these policies and procedures.

(4) Clients shall not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(5) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior.

(a) The policies and procedures shall be consistent with the provisions of R432-152-15(2).

(b) The policies and procedures shall:

(i) specify all facility-approved interventions to manage inappropriate client behavior;

(ii) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive; and

(iii) ensure, prior to the use of more restrictive techniques, that less restrictive measures have been implemented with the results documented in the client's record.

(c) The policies and procedures shall address the following:

(i) the use of time-out rooms;

(ii) the use of physical restraints;

(iii) the use of chemical restraints to manage inappropriate behavior;

(iv) the application of painful or noxious stimuli;

(v) the staff members who may authorize the use of specified interventions; and

(vi) a mechanism for monitoring and controlling the use of such interventions.

(d) Interventions to manage inappropriate client behavior shall be employed with safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(e) A facility may not utilize p.r.n. or as needed programs to control inappropriate behavior.

(6) A client may be placed in a time-out room from which egress is prevented only if the following conditions are met:

(a) The placement is part of an approved systematic time-out program as required by R432-152-15(5).

(b) The client is under the direct constant visual supervision of designated staff.

(c) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(d) Placement of a client in a time-out room shall not exceed one hour per incident of maladapted behavior.

(e) Clients placed in time-out rooms shall be protected from hazardous conditions including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets.

(f) The facility must maintain a log for each time-out room.

(7) A facility may employ physical restraints only:

(a) as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(b) as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(c) as a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(8) A facility may apply emergency restraints for initial or extended use for no longer than 12 consecutive hours for the combined initial and extended use time period provided that authorization is obtained as soon as the client is restrained or stable.

(9) A facility may not issue orders for restraint on a standing or as needed basis.

(10) Facility staff must check clients placed in restraints at least every 30 minutes and maintain documentation of these checks.

(a) Restraints must be applied to cause the least possible discomfort and may not cause physical injury to the client.

(b) Facility staff must provide and document opportunity for motion and exercise for a period of not less than 10 minutes during each two hour period in which a restraint is employed.

(c) Barred enclosures shall not be more than three feet in height and shall not have tops.

(11) The facility shall not administer drugs at a dose that interferes with a client's daily living activities.

(a) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(b) Drugs used for control of inappropriate behavior shall be:

(i) monitored closely, in conjunction with the physician and the drug review requirement; and

(ii) gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

R432-152-16. Physician Services.

(1) The facility shall ensure the availability of physician services 24 hours a day.

(a) The physician shall develop, in coordination with facility licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that the client requires 24-hour licensed nursing care.

(b) The care plan shall be integrated into the client's program plan.

(c) Each client requiring a medical care plan of treatment shall be admitted by and remain under the care of a health practitioner licensed to prescribe medical care for the client.

(d) The facility shall obtain written orders for medical treatment (documented telephone orders are acceptable) at the time of admission.

(e) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum includes:

(i) an evaluation of vision and hearing;

(ii) immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics;

(iii) routine screening laboratory examinations, as determined necessary by the physician, and special studies when needed; and

(iv) tuberculosis control in accordance with R388-804, Tuberculosis Control Rule.

(2) A physician shall participate in the establishment of each newly admitted client's initial individual program plan as required by R432-152-11.

(a) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(b) A physician shall participate in the discharge planning of clients under a medical care plan of treatment. In cases of discharge against medical advice, the facility must immediately notify the attending physician.

R432-152-17. Nursing Services.

(1) The facility shall provide nursing services in accordance with client needs. Nursing services shall include:

(a) participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(b) the development, with a physician, of a medical care plan of treatment for a client if the physician has determined that an individual client requires such a plan; and

(c) for those clients certified as not needing a medical care plan, a documented quarterly health status review by direct physical examination conducted by a licensed nurse including identifying and implementing nursing care needs as prescribed by the client's physician.

(2) Nursing services shall coordinate with other members of the interdisciplinary team to implement appropriate protective and preventive health measures that include:

(a) training clients and staff as needed in appropriate health and hygiene methods;

(b) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(c) training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(3) Nursing practice and delegation of nursing tasks must comply with R156-31b-701, Delegation of Nursing Tasks.

(a) If the facility utilizes only licensed practical nurses to provide health services, there must be a formal arrangement for a registered nurse to provide verbal or on-site consultation to the licensed practical nurse.

(b) Non-licensed staff who work with clients under a medical care plan must be supervised by licensed nursing personnel.

(4) The administrator shall employ and designate, in writing, a nursing services supervisor.

(a) The nursing services supervisor may be either a registered nurse or a licensed practical nurse.

(b) The nursing services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the nursing services supervisor.

(5) The nursing services supervisor is responsible to ensure that the following duties are carried out:

(a) establish a system to assure nursing staff implement physician orders and deliver health care services as needed;

(b) plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each client's needs are met;

(c) review each client's health care needs and orders for care and treatment;

(d) review client individual program plans to assure necessary medical aspects are incorporated;

(e) review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(f) instruct the nursing staff on the legal requirements of charting and ensure that a nurse's notes describe the care rendered and include the client's response;

(g) teach and coordinate rehabilitative nursing to promote

and maintain optimal physical and mental functioning of the client;

(h) inform the administrator, attending physician, and family of significant changes in the client's health status;

(i) when appropriate, plan with the physician, family, and health-related agencies for the care of the client upon discharge;

(j) develop, with the administrator, a nursing services procedure manual including all procedures practiced in the facility;

(k) coordinate client services through appropriate quality assurance and interdisciplinary team meetings;

(l) respond to the pharmacist's quarterly medication report;

(m) develop written job descriptions for all levels of nursing personnel and orient all new nursing personnel to the facility and their duties and responsibilities;

(n) complete written performance evaluations for each member of the nursing staff at least annually; and

(o) plan or conduct documented training programs for nursing staff and clients.

R432-152-18. Dental Services.

(1) The facility shall provide or arrange for comprehensive dental diagnostic services and comprehensive dental treatment for each client.

(a) "Comprehensive dental diagnostic services" means:

(i) a complete extra-oral and intra-oral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility, unless the client's record contains an examination that was completed within twelve months before admission;

(ii) periodic examination and diagnosis performed annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(iii) a review of the results of examination and entry of the results in the client's dental record.

(b) "Comprehensive Dental Treatment":

(i) the available emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(ii) dental care needed for relief of pain and infection, restoration of teeth, and maintenance of dental health.

(2) If appropriate, a dental professional shall participate in the development, review and update of the individual program plan as part of the interdisciplinary process, either in person or through written report to the interdisciplinary team.

(3) The facility shall provide education and training for clients and responsible staff in the maintenance of clients' oral health.

(4) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client with a dental summary maintained in the client's living unit.

(5) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's record.

R432-152-19. Pharmacy Services.

(1) The facility shall provide routine and emergency drugs and biologicals.

(a) Drugs and biologicals may be obtained from community or contract pharmacists, or the facility may maintain a licensed pharmacy.

(b) Pharmacy services shall be under the direction and responsibility of a qualified, licensed pharmacist. The pharmacist may be employed full time by the facility or may be retained by contract.

(c) The pharmacist shall develop pharmacy service policies and procedures in conjunction with the administrator. Pharmacy policies shall address:

(i) drug orders;

(ii) labeling;

(iii) storage;

(iv) emergency drug supply;

(v) administration of medications;

(vi) pharmacy supplies; and

(vii) automatic-stop orders.

(2) The pharmacist, with input from the interdisciplinary team, shall review the drug regimen of each client at least quarterly.

(a) The pharmacist shall report any irregularities or errors in a client drug regimen to the prescribing physician and interdisciplinary team.

(b) The pharmacist shall develop and review a record of each client's drug regimen.

(3) An individual medication administration record shall be maintained for each client.

(4) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan, either in person or through written report to the interdisciplinary team.

(5) The facility shall have an organized system for drug administration that identifies each drug up to the point of administration. The system shall assure that all medications and treatments:

(a) are administered in compliance with the physician's orders;

(b) are administered without error; and

(c) are administered by licensed medical or licensed nursing personnel.

(6) Clients shall be taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective.

(a) The client's physician shall be informed of the interdisciplinary team's recommendation that self-administration of medications is an objective for the client.

(b) No client may self-administer medications until he or she demonstrates the competency to do so.

(7) Each telephone orders for medications shall be recorded immediately including the date and time of the order and the receiver's signature and title. The order must be countersigned and dated within 15 days by the person who prescribed the order.

(8) The facility shall maintain records of the receipt and disposition of all controlled drugs.

(a) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition shall be readily traced.

(b) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV, drugs subject to the Comprehensive

Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et sec., as implemented by 42 CFR Part 308.

(9) The facility shall store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(a) All controlled substances shall be secured in a manner consistent with applicable state pharmacy laws.

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

(c) Medication containers shall be clearly labeled.

(d) Only persons authorized by facility policy shall have access to medications.

(e) Medication intended for internal use shall be stored separately from medication intended for external use.

(f) Medications stored at room temperature shall be maintained within 59 - 80 degrees F (15 to 30 degrees C); and refrigerated medications shall be maintained within 36 - 46 degrees F (2 to 8 degrees C).

(g) Medications and similar items that require refrigeration shall be stored securely and segregated from food items.

(h) Medications shall be kept in the original pharmacy container and shall not be transferred to other containers. Drugs taken out of the facility for home visits, workshops, school, etc. shall be packaged and labeled in accordance with State law by a person authorized to package medications.

(i) Clients who have been trained to self administer drugs in accordance with R432-152-19(6) may have access to keys to their individual drug supply.

(10) Labeling of drugs and biologicals shall:

(a) be based on currently accepted professional principles and practices; and

(b) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(11) The facility shall remove from use outdated drugs and drug containers with worn, illegible, or missing labels.

(12) Drugs and biologicals packaged in containers designated for a particular client shall be immediately removed from the client's current medication supply if discontinued by the physician.

(13) Drugs may be sent with the client upon discharge if so ordered by the discharging physician provided that the drugs are released in compliance with Utah pharmacy law and rules and a record of the drugs sent with the client is documented in the client's health record.

(14) Discontinued individual client drugs supplied by prescription or those which remain in the facility after discharge or death of the client shall be destroyed within one month by the facility in the following manner:

(a) All drugs shall be destroyed by the facility in the presence of the staff pharmacist or consulting pharmacist and an appointed licensed nurse employed by the facility.

(b) If one or both of these persons are not available within the month, a licensed nurse and an individual appointed by the administrator may serve as witnesses.

(c) These appointments shall be rotated periodically among responsible staff members.

(d) The name of the client, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction, and the signatures of the witnesses required above shall be recorded in the client's record or in a separate log and retained for at least three years.

(15) Unless otherwise prohibited under applicable federal or state laws, individual client drugs supplied in sealed containers may be returned, if unopened, to the issuing pharmacy for disposition provided that:

(a) no controlled drugs are returned;

(b) all such drugs are identified as to lot or control number; and

(c) the signatures of the receiving pharmacist and a licensed nurse employed by the facility are recorded and retained for at least three years in a separate log which lists the name of the client, the name, strength, prescription number, if applicable, the amount of the drug returned, and the date of return.

(16) An emergency drug supply appropriate to the needs of the clients served shall be maintained in the facility.

(a) The pharmacist in coordination with the administrator shall develop an emergency drug supply policy to include the following requirements:

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

(ii) Containers shall be sealed to prevent unauthorized use.

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

(iv) The emergency drug supply shall be accessible to nursing staff.

(v) The pharmacist shall inventory the emergency drug supply monthly. Used or outdated items shall be replaced within 72 hours.

(17) The pharmacy shall furnish drugs and biologicals as follows:

(a) Drugs ordered for administration as soon as possible shall be available and administered within two hours of a physician's order.

(b) Anti-infectives shall be available and administered within four hours of a physician's order.

(c) All new drug orders shall be initiated within 24 hours of the order or as indicated by the physician.

(d) Prescription drugs shall be refilled in a timely manner.

(e) Orders for controlled substances shall be sent to the pharmacy within 48 hours of the order. The order sent to the pharmacy may be a written prescription by the prescriber, a direct copy of the original order, or an electronic reproduction.

R432-152-20. Laboratory Services.

(1) The facility must provide laboratory services in accordance with the size and needs of the client population.

(2) Laboratory services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-152-21. Environment.

(1) Infection control procedures and reporting shall comply with R432-150-11(4).

(2) The facility shall have a safety committee which includes the administrator, QMRP, head housekeeper, chief of

facility maintenance, and others as designated by facility policy.

(a) The safety committee must:

(i) review all incident and accident reports and recommend changes to the administrator to prevent or reduce reoccurrence;

(ii) review facility safety policies and procedures at least annually, and make appropriate recommendations; and

(iii) establish a procedure to inspect the facility periodically for hazards.

(b) Inspection reports shall be filed with the safety committee.

R432-152-22. Emergency Plan and Procedures.

(1) The facility shall develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(a) The facility shall periodically review and update written emergency procedures.

(b) The emergency plan must be made available to the staff.

(c) Facility staff must receive periodic training on emergency plan procedures.

(d) The emergency plan shall address the following:

(i) evacuation of occupants to a safe place within the facility or to another location;

(ii) delivery of essential care and services to facility occupants by alternate means;

(iii) delivery of essential care and services when additional persons are housed in the facility during an emergency;

(iv) delivery of essential care and services to facility occupants when the staff is reduced by an emergency; and

(v) maintenance of safe ambient air temperatures within the facility. Ambient air temperature of at least 58 degrees F. Must be maintained during emergencies.

(e) Emergency heating must be approved by the local fire department.

(2) The facility's emergency plan shall identify:

(a) the person with decision-making authority for fiscal, medical, and personnel management;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency, in order of priority;

(f) method of transporting and evacuating clients and staff to other locations; and

(g) conversion of facility for emergency use.

(3) Emergency telephone numbers shall be posted near telephones accessible to staff.

(4) Simulated disaster drills shall be held semi-annually for all staff, in addition to fire drills. Documentation shall be maintained for Department review.

(5) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall delineate evacuation routes and location of fire alarm boxes and fire extinguishers.

(b) The written fire-emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills and fire drill documentation shall be in accordance with Buildings Under the Jurisdiction of the State Fire Prevention Board, R710-4.

(d) The facility shall evacuate clients during at least one drill each year on each shift including:

(i) making special provisions for the evacuation of clients with physical disabilities;

(ii) filing a report and evaluation on each evacuation drill; and

(iii) investigating all problems with evacuation drills, including accidents, and take corrective action.

R432-152-23. Smoking Policies.

Smoking policies shall comply with UCA Title 26, Chapter 38, the "Utah Indoor Clean Air Act", and Sections 12-7.4 and 13-7.4 of the 1997 Life Safety Code.

R432-152-24. Pets in Long-Term Care Facilities.

(1) Each facility shall develop a written policy regarding pets in accordance with these rules and local ordinances.

(2) The facility shall adhere to the requirements of R432-150-21.

R432-152-25. Housekeeping Services.

(1) There shall be housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

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

(3) The housekeeping service shall meet all the requirements of R432-150-26.

R432-152-26. Laundry Services.

The facility shall adhere to the requirements of R432-150-27.

R432-152-27. Maintenance Services.

The facility shall adhere to the requirements of R432-150-28.

R432-152-28. Dietary Services.

The facility shall adhere to the requirements of R432-150-24.

R432-152-29. Client Records.

(1) The facility shall develop and maintain a record keeping system that includes a separate record for each client with documentation of the client's health care, active treatment, social information, and protection of the client's rights.

(a) The facility shall keep confidential all information contained in the client's records, regardless of the form or storage method of the records.

(b) The facility shall develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or client's legal

guardian.

(c) All entries into client records must be legible, dated and signed by the individual making the entry.

(d) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.

(e) The facility shall insure each identified residential living unit has available on-site pertinent information of each client's record.

(f) Client's records shall be complete and systematically organized according to facility policy to facilitate retrieval and compilation of information.

(2) The client record department shall be under the direction of a registered record administrator, RRA, or an accredited record technician, ART. If an RRA or ART is not employed at least part time, the facility shall consult at least semi-annually with an RRA or ART according to the needs of the facility.

(3) Client records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(4) Client records shall be protected against access by unauthorized individuals.

(5) Client records shall be retained for at least seven years after the last date of client care.

(a) Records of minors shall be retained as follows:

(i) at least two years after the minor reaches age 18 or the age of majority; and

(ii) a minimum of seven years.

(b) All client records shall be retained within the facility upon change of ownership.

(c) If a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all client records, client indices, and discharges for the period specified.

(d) The facility may arrange storage of client records with another facility or may return client records to the attending physician who is still in the community.

R432-152-30. Respite Care.

(1) Mental Retardation Facilities may provide respite services that comply with the following requirements:

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

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days are a mental retardation facility admission, and shall be 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, 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 a service agreement to serve as the plan of care. The service agreement must 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 initial day of service and updated annually.

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

(i) Retention and storage of records shall comply with R432-152-29(3) and (4).

(ii) Confidentiality and release of information shall comply with R432-150-25(3).

(iii) The record shall contain the following:

(A) a service agreement;

(B) demographic information and resident identification data;

(C) nursing notes;

(D) physician treatment orders;

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

(F) accident and injury reports; and

(G) a post-service summary.

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

R432-152-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities

July 6, 1999	**26-21-5**
Notice of Continuation December 15, 1997	**26-21-13.5**

R432. Health, Health Systems Improvement, Licensing.
R432-200. Small Health Care Facility (Four to Sixteen Beds).
R432-200-1. Legal Authority.

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

R432-200-2. Purpose.

This rule allows services at varying levels of health care intensity to be provided in structures that depart from the traditional institutional setting. Health care may be delivered in a less restrictive, residential, or home-like setting. Small health care facilities are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability for self-preservation: to exit a building unassisted in an emergency.

R432-200-3. Compliance.

All small health care facilities shall be in full compliance at the time of licensure. All Medicare and Medicaid certified facilities must comply with Title XVIII and Title XIX regulations.

R432-200-4. Definitions.

(1) See common definitions in R432-1-3.

(2) Special Definitions:

(a) "Levels of Care" mean the range of programs and the physical facilities in which they may be offered according to these rules.

(b) "Level I" refers to a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to persons who are non-mobile and non-ambulatory. All Level I facilities shall conform to the requirements in the Utah Department of Health, Nursing Care Facility rules R432-150. A Level I facility with a bed capacity of 16 beds or less, may request a variance from some construction standards for nursing care facilities, if the health, safety, and welfare of residents can be preserved.

(i) Skilled Nursing Facility shall maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is the availability of skilled nursing care or related service on an extended basis.

(ii) Intermediate Care Facility shall provide 24-hour in resident care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(c) "Level II" refers to a facility that provides at least 24-hour care, 24-hour staff coverage, and licensed therapy or nursing care (based on program requirements) to 4-16 persons who are non-mobile and non-ambulatory. Level II facilities may include:

(i) Health Care Nursery shall provide full-time supervision and care to children under six years of age who do not require continuous nursing care. The facility shall provide at least the following:

(A) Twenty-four hour care and/or staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as required.

(ii) Intermediate Care Facility for the Mentally Retarded shall provide 24-hour supervisory care to developmentally disabled and mentally retarded individuals, (note: An ICF/MR facility may be categorized as a Level IV facility if no resident is under therapy that utilizes chemical or physical restraints which may render the resident incapable of self-preservation in an emergency), who need supervision in a coordinated and integrated program of health, habilitative and supportive services, but who do not require continuous nursing care. The facility shall, except as indicated in the supplement, provide the following:

(A) Twenty-four hour care and staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as required.

(iii) Home for the Aging shall provide group housing, supervision, social support, personal care, therapy, and some nursing care to elderly persons who do not need intermediate or skilled nursing care. The facility shall provide at least the following:

(A) Twenty-four hour staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services for at least three meals;

(D) Provision for licensed therapies, as necessary.

(iv) Social Rehabilitation Facility shall provide group housing, personal care, social rehabilitation, and treatment for alcoholism, drug abuse, or mental problems to persons who do not require intermediate or skilled nursing care. (Note: if each resident in the program is certified by a physician or QMRP as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility.) The facility shall provide the following:

(A) Twenty-four hour staff availability or program care;

(B) Provision for medical coverage;

(C) Provision for dietary services for at least three meals;

(D) Provision for licensed therapies, as necessary.

(d) "Level III" refers to a facility that provides at least 24-hour staff coverage and licensed therapy (based on program requirements) to 4-16 persons who are ambulatory and mobile but who are under chemical or physical restraints. Level III facilities may include:

(i) Mental Health Facility shall provide 24 hour care to persons with mental illness who require medical and psychiatric supervision including diagnosis and treatment. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;

(B) Provision for medical and psychiatric supervision;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as necessary.

(ii) Youth Correction Center shall provide 24-hour supervision, care, training, treatment, and therapy to persons who by court order may be restricted in their daily activities, and under security control that includes lock-up. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;

(B) Provision for medical and psychiatric supervision;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as necessary.

(e) "Level IV" refers to a facility that provides specialized

program and support care to 4-16 persons who are ambulatory and mobile, who require programs of care and more supervision than provided in a residential care facility. Level IV facilities may include:

(i) Intermediate Care Facility for the Mentally Retarded. All mentally retarded residents in a Level IV facility must be ambulatory to qualify for Medicaid/Medicare reimbursement.

(ii) Mental Health Facility. (See R432-200-4(2)(d)(i), Level III)

(iii) Home for the Aging. (See R432-200-4(2)(c)(iii), Level II)

(iv) Social Rehabilitation Facility. (See R432-200-4(2)(c)(iv), Level II)

R432-200-5. License Required.

See R432-2.

R432-200-6. Construction and Physical Environment.

(1) See R432-12, Small Health Care Facility Construction rules.

R432-200-7. Administration and Organization.

(1) Organization.

Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility. Responsibilities shall include at least the following:

(a) Comply with all federal, state and local laws, rules, and regulations;

(b) Adopt and institute by-laws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(c) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management of the facility;

(e) Secure and update contracts for professional and other services;

(f) Receive and respond, as appropriate, to the annual licensure inspection report by the Department;

(g) Notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator. The notice shall include the name of the new administrator and the effective date of the change.

(3) Administrator.

(a) Administrator's Appointment.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(b) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(c) The administrator shall act as the administrator of no more than four small health care facilities (or a maximum of 60 beds) at any one time.

(d) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day (at least four hours per week for each six residents) and as necessary to properly manage the facility and respond to appropriate requests by the Department.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(4) Administrator Responsibilities.

The administrator shall have the following responsibilities:

(a) Complete, submit and file all records and reports required by the Department;

(b) Act as a liaison among the licensee, medical and nursing staff, and other supervisory staff of the facility, as appropriate, and respond to recommendations of the quality assurance committee;

(c) Assure that employees are oriented to their job functions and receive appropriate in-service training;

(d) Implement policies and procedures for the operation of the facility;

(e) Hire and maintain the required number of licensed and non-licensed staff as specified in these rules to meet the needs of residents;

(f) Maintain facility staffing records for 12 months;

(g) Secure and update contracts required for professional and other services not provided directly by the facility;

(h) Verify all required licenses and permits of staff and consultants at the time of hire and effective date of contract;

(i) Review all incident and accident reports and take appropriate action.

(5) Medical Director.

The administrator of each facility shall retain, by formal agreement, a licensed physician to serve as medical director or advisory physician on a consulting basis according to the residents' and facility's needs.

(6) Medical Director Responsibilities.

The medical director or advisory physician shall have responsibility for at least the following:

(a) Review or develop written resident-care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident-care policies and procedures annually with the administrator;

(c) Serve as liaison between the resident's physician and the administrator;

(d) Serve as a member of the quality assurance committee (see R432-200-10);

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the health services supervisor in matters relating to resident-care policies.

(7) Staff and Personnel.

(a) Organization.

The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services, and functions.

(b) Qualifications and Orientation.

(i) The administrator shall develop job descriptions including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to the facility's policies and procedures manuals, resident-care policies, therapeutic manuals, and other information necessary to effectively perform their duties and carry out their responsibilities.

(8) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all facility personnel which conforms with the provisions of R432-150-26(6).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(9) In-service Training.

There shall be planned and documented in-service training for all facility personnel. The following topics shall be addressed annually:

(a) Fire prevention (see R432-200-11);

(b) Accident prevention and safety procedures including instruction in the following:

(i) Body mechanics for all employees required to lift, turn, position, or ambulate residents;

(ii) Proper safety precautions when floors are wet or waxed;

(iii) Safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

(c) Review and drill of emergency procedures and evacuation plan (See R432-200-11);

(d) Prevention and control of infections (see R432-150-25);

(e) Confidentiality of resident information;

(f) Residents' rights;

(g) Behavior Management and proper use and documentation of restraints;

(h) Oral hygiene and first aid; and

(i) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(j) Training in habilitative care;

(k) Reporting abuse, neglect and exploitation.

R432-200-8. Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-200-9. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for required professional and other services not provided directly by the facility.

(b) Contracts shall include:

(i) The effective and expiration dates of the contract;

(ii) A description of goods or services provided by the contractor to the facility;

(iii) A statement that the contractor will conform to the standards required by Utah law or rules.

(c) The contract shall be available for review by the Department.

(2) Transfer Agreements.

(a) The licensee shall maintain, a written transfer agreement with one or more hospitals (or nearby health facilities) to facilitate the transfer of residents and essential resident information.

(b) The transfer agreement shall include provisions for:

(i) Criteria for transfer;

(ii) Appropriate methods of transfer;

(iii) Transfer of information needed for proper care and treatment of the individual being transferred;

(iv) Security and accountability of the personal property of the individual being transferred;

(v) Proper notification of the hospital and next of kin or responsible person before transfer.

R432-200-10. Quality Assurance.

(1) The administrator shall monitor the quality of services offered by the facility through the formation of a committee that addresses infection control, pharmacy, therapy, resident care, and safety, as applicable.

(2) The committee shall include the administrator, consulting physician or medical director, health services supervisor, and consulting pharmacist. Special program directors and maintenance and housekeeping personnel shall serve as necessary.

(3) The committee shall meet quarterly and keep minutes of the proceedings.

(4) Infection Control Requirements.

See R432-150-11.

(5) Pharmacy Requirements.

Based on the services offered, the committee shall:

(a) Monitor the pharmaceutical services in the facility;

(b) Recommend changes to improve pharmaceutical services;

(c) Evaluate medication usage; and

(d) Develop and review pharmacy policies and procedures annually, and recommend changes to the administrator and licensee.

(6) Resident Care Requirements.

Based on the services offered, the committee shall address the following:

(a) Review, at least annually, the facility's resident care policies including rehabilitative and habilitative programs, as appropriate.

(b) Make recommendations to the medical director and advisory physician as appropriate;

(c) Review recommendations from other facility committees to improve resident care.

(7) Safety Requirements.

Based on the services offered, the committee shall address

the following:

(a) Review all incident and accident reports and recommend changes to the administrator to prevent or reduce their reoccurrence;

(b) Review facility safety policies and procedures, at least annually, and make recommendations;

(c) Establish a procedure to inspect the facility periodically for hazards. An inspection report shall be filed with the Committee.

R432-200-11. Emergency and Disaster.

(1) Facilities have the responsibility to assure the safety and well-being of their residents in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, or epidemic.

(2) Policies and Procedures.

(a) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(b) The written plan shall be distributed to all facility staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated to conform with local emergency plans, at least annually, by the administrator and the licensee.

(d) The plan shall be available for review by the Department.

(3) Staff and residents shall receive education, training, and drills to respond in an emergency.

(a) Drills and training shall be documented and comply with applicable laws and regulations.

(b) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and emergency transport systems shall be posted.

(4) Emergency Procedures.

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 is reduced by an emergency;

(e) Maintenance of safe ambient air temperatures within the facility;

(i) Emergency heating plans must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or less constitutes an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate and appropriate action in the best interests of the resident.

(5) Emergency Plan.

(a) 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) The individuals who shall be notified in an emergency in the order of priority. Telephone numbers shall be accessible to staff at each nurse's station;

(vi) Methods of transporting and evacuating residents and staff to other locations;

(vii) Conversion of facility for emergency use.

(b) Documentation of emergency events and responses and a record of residents and staff evacuated from the facility to another location shall be kept. Any resident emergency shall be documented in the resident's record.

(c) Drills shall be held semi-annually for all residents and staff.

(d) There shall be regular in-service training on disaster prepare

(6) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire-emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) An evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department shall be posted throughout the facility.

(c) The written fire-emergency plan shall include fire-containment procedures and how to use alarm systems and signals.

(d) Fire and internal disaster drills shall be held, at least quarterly, under varied conditions for each shift.

(i) The actual evacuation of residents during a drill is optional except in a facility caring for residents who are capable of self-preservation.

(ii) The actual evacuation of residents during a drill on the night shift is optional.

R432-200-12. Residents' Rights.

(1) Residents' Rights Policies and Procedures.

(a) A committee shall be appointed to update policy, evaluate, and act on residents' rights complaints.

(b) Written residents' rights shall be established, posted in areas accessible to residents, and made available to the resident, or guardian, or next of kin.

(c) These shall be available to the public and the Department upon request.

(2) Each resident admitted to the facility shall have the following rights:

(a) To be fully informed, as evidenced by the resident's written acknowledgement prior to or at the time of admission and during stay, of residents' rights and of all rules governing resident conduct;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under

Titles XVIII or XIX of the Social Security Act;

(c) To be fully informed of his medical condition, by a physician, unless medically contraindicated and documented in the resident's health record by the attending physician;

(d) To be afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(f) To be transferred or discharged only for medical reasons, or his welfare or that of other residents, or for nonpayment for his stay, and to be given reasonable advance notice to ensure orderly transfer or discharge; such actions shall be documented in his health record;

(g) To be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff or outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(h) To manage his personal financial affairs, or to be given at least quarterly or upon request an accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(i) To be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others (see R432-150-11);

(j) To be assured confidential treatment of his personal and medical records and to approve or refuse their release to any individual outside the facility, except in the case of his transfer to another health facility, or as required by law or third party payment contract;

(k) To be treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for personal needs;

(l) Not to be required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

(m) To associate and communicate privately with persons of his choice, and to send and receive personal mail unopened;

(n) To meet with and participate in activities of social, religious, and community groups at his discretion;

(o) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(p) If married, to be assured privacy for visits by his spouse and if both are residents in the facility, to be permitted to share a room;

(q) To have daily visiting hours established;

(r) To have members of the clergy admitted at the request of the resident or person responsible at any time;

(s) To allow relatives or persons responsible to visit residents at any time;

(t) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(u) To have reasonable access to telephones both to make and receive confidential calls.

(v) To wear appropriate personal clothing and religious or other symbolic items as long as they do not interfere with diagnostic procedures or treatment.

(3) Safeguards for Residents' Monies and Valuables

Each facility to whom a resident's money or valuables have been entrusted according to R432-200-12(2)(h), above shall comply with the following:

(a) No licensee shall use residents' monies or valuables as his own or mingle them with his own.

(i) Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(ii) Each licensee shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(b) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order. Each account shall be kept current with columns for debits, credits, and balance.

(c) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(d) Residents' monies not kept in the facility shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank authorized to do business in Utah, the deposits of which must be insured.

(e) 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.

(f) When the amount of residents' money entrusted to a licensee exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-200-12(3)(c) and (d) above.

(g) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall 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 normal banking days.

(h) Within 30 days following the death of a resident, except in a coroner or medical examiner case, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court, and a copy of said notice shall be filed with the Department.

R432-200-13. Admission and Discharge.

Each facility shall develop admission and discharge policies that shall be available to the public upon request.

(1) Admission Policies.

(a) Residents shall 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.

(b) Residents shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe care for the resident.

(c) There shall be a written order (a documented telephone order is acceptable) for admission and care at the time of admission.

(d) A resident shall be assessed within seven days of admission unless otherwise indicated by a program requirement. Admission policies shall define the assessment process including an identification of the resident's medical, nursing, social, physical, and emotional needs.

(e) A physical examination shall be performed, in accordance with R432-200-14(2), by the attending physician or by an individual licensed and so authorized.

(f) Upon admission, a brief narrative of the resident's condition including his temperature, pulse, respiration, blood pressure, and weight shall be documented.

(g) The resident shall be informed of his rights as a resident.

(i) A written copy of the facility's residents' rights shall be explained and given to the resident.

(ii) If the resident is unable to comprehend his rights, a written copy shall be given to the next of kin or other responsible party.

(iii) The inability of the resident to provide consent shall be documented in the resident's record.

(2) Discharge Policies.

(a) The resident shall be discharged when the facility is no longer able to meet the resident's identified needs.

(b) There shall be an order for the resident's discharge by the physician or person in charge of the resident's care.

(c) A discharge summary containing a brief narrative of the resident's diagnoses, course of treatment, conditions, and final disposition shall be documented in the medical record.

(d) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt (see R432-200-12(3)).

R432-200-14. Physician Services.

(1) General Requirements.

(a) Each resident in need of nursing services, habilitative, or rehabilitative care shall be under the care of a licensed physician.

(b) Each resident shall be permitted to choose his physician.

(c) Upon admission, each resident shall have orders for treatment and care.

(2) Physician Responsibilities.

(a) Each resident shall have a medical history and pertinent physical examination at least annually.

(b) Each intermediate care resident shall be seen at least once during the first 60 days of residency.

(c) The attending physician or medical practitioner shall see the resident whenever necessary but at least every 60 days, unless the attending physician or practitioner documents in the resident's record why the resident does not need to be seen this frequently.

(d) The physician or practitioner shall establish and follow a schedule alternating visits.

(e) Each visit and evaluation shall be documented in the resident's record.

(3) Policies and Procedures.

There shall be policies and procedures that provide for:

(a) Access to physician services in case of medical emergency or when the attending physician is not available;

(b) Names and telephone numbers of on-call physicians in the health services supervisor's office;

(c) Reevaluation of the resident and review of care and treatment orders when there is a change of attending physician which shall be completed within 15 days of such change.

(4) Non-Physician Practitioners.

The following practitioners may render medical services according to state law:

(a) Nurse practitioners licensed to practice in the state of Utah;

(b) Physicians' assistants working under the supervision of a licensed physician and performing only those selected diagnostic and therapeutic tasks identified in Rules and Regulations and Standards for Utilization of Physician Assistants.

(5) Physician Orders and Notes.

(a) The following items shall be part of the treatment record and shall be signed and dated by a physician:

(i) Admission orders;

(ii) Medication, treatment, therapy, laboratory, and diet orders;

(iii) History and physical examinations;

(iv) Physician's progress notes;

(v) The discharge summary;

(vi) All discharge orders;

(b) All telephone orders shall be recorded immediately and include:

(i) date and time of order;

(ii) the receiver's signature and title; and

(iii) the order shall be countersigned and dated within 15 days by the physician who prescribed the order.

(c) The attending physician shall complete the resident's medical record within 60 days of the resident's discharge, transfer, or death.

(6) Notification of Physician.

(a) The attending physician shall be notified promptly upon:

(i) Admission of the resident;

(ii) A sudden and/or marked adverse change in the resident's signs, symptoms, or behavior;

(iii) Any significant weight change in a 30-day period unless the resident's physician stipulates another parameter in writing;

(iv) Any adverse response or reaction by a resident to a medication or treatment;

(v) Any error in medication administration or treatment;

(vi) The discovery of a decubitus ulcer, the beginning of treatment, and if treatment is not effective. Notification shall be documented.

(b) The physician shall be notified if the facility is unable to obtain or administer drugs, equipment, supplies, or services promptly as prescribed. If the attending physician or his designee is not readily available, emergency medical care shall be provided. The telephone numbers of the emergency care physician shall be posted at the control station.

(c) All attempts to notify physicians shall be noted in the resident's record including the time and method of communication and the name of the person acknowledging contact, if any.

R432-200-15. Nursing Care.

(1) Organization.

(a) Each facility shall provide nursing care services commensurate with the needs of the residents served.

(b) All licensed nursing personnel shall maintain current Utah licenses to practice nursing.

(2) Responsibilities of the Health Services Supervisor.

The health services supervisor shall have the following responsibilities and comply with R432-1-3(55):

(a) Direct the implementation of physician's orders;

(b) Plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each resident's needs are met;

(c) Review the health care needs of each resident admitted to the facility and formulate with other professional staff a resident care plan according to the attending physician's orders;

(d) Review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) Ensure that nursing notes describe the care rendered including the resident's response. Instruct staff on the legal requirements of charting;

(f) Supervise clinical staff to assure they perform restorative measures in their daily care of residents;

(g) Teach and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident;

(h) Keep the administrator and attending physician informed of significant changes in the resident's health status;

(i) Plan with the physician, family, and health-related agencies the care of the resident upon discharge;

(j) Coordinate resident services through the quality assurance committees (see R432-200-10);

(k) Assign qualified supervisory and supportive staff throughout the day and night to assure that the health needs of residents are met;

(l) Develop written job descriptions for all health service personnel and orient all new personnel to the facility and their duties and responsibilities;

(m) Evaluate and document the performance of each member of the staff at least annually. This evaluation shall be available for Departmental review;

(n) Plan and conduct documented orientation and in-service programs for staff.

(3) Required Staffing Hours.

(a) Any facility that provides nursing care shall provide at least two hours (120 minutes) of nursing-staff coverage (RN + LPN + Aides) per resident per 24 hours of which 20 percent or 24 minutes per resident shall be provided by licensed staff (RN + LPN).

(b) Facilities providing rehabilitative or habilitative care shall:

(i) Provide adequate staff care and supervision to meet the resident's needs based on the resident-care plan, or;

(ii) Conform to the specific program requirements in the appropriate supplement.

(c) The above requirements are minimum only. Additional staff may be necessary to ensure adequate coverage in the event of staff illness, turnover, sudden increase in resident population, or similar event.

(d) Facilities that participate in the Medicare/Medicaid programs shall, as a condition of such participation, meet the staffing standards approved through administrative rule.

(4) Nursing or Health Care Services.

(a) The health services procedure manual shall be reviewed and updated annually by the health services supervisor.

(b) The manual shall be accessible to all clinical staff and available for review by the Department.

(c) The procedures shall address the following:

(i) Bathing;

(ii) Positioning;

(iii) Enema administration;

(iv) Decubitus prevention and care;

(v) Bed making;

(vi) Isolation procedures;

(vii) Clinitest procedures;

(viii) Laboratory requisitions;

(ix) Telephone orders;

(x) Charting;

(xi) Rehabilitative nursing;

(xii) Diets and feeding residents;

(xiii) Oral hygiene and denture care;

(xiv) Naso-gastric tube insertion and care (by registered nurses, LPNs, with appropriate training, or physicians only).

(5) Measures to Reduce Incontinence.

Measures shall be implemented to prevent and reduce incontinence for each resident.

(a) There shall be a written assessment by a licensed nurse to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) A weekly evaluation of the resident's performance in the bowel/bladder management program shall be recorded in the resident's record by a licensed nurse.

(d) Fluid intake and output shall be recorded for each resident as ordered by the physician or charge nurse.

(i) Intake and output records shall be evaluated at least weekly and each evaluation shall be included in the resident's record;

(ii) Physician's or nurse's orders shall be reevaluated periodically.

(6) Rehabilitative Nursing.

Nursing personnel shall be trained in rehabilitative nursing.

(a) Rehabilitative nursing services shall be performed daily for residents who require such services and shall be documented

in the resident's record when provided.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the activities of daily living.

(c) Rehabilitative nursing services shall include the following:

(i) Turning and positioning of residents;

(ii) Assisting residents to ambulate;

(iii) Improving resident's range of motion;

(iv) Restorative feeding;

(v) Bowel and bladder retraining;

(vi) Teaching residents self-care skills;

(vii) Teaching residents transferring skills;

(viii) Teaching residents self-administration of medications, as appropriate;

(ix) Taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

R432-200-16. General Resident Care Policies.

(1) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-200-12).

(2) Each facility shall develop and implement resident care policies to be reviewed annually by the health services supervisor.

(3) These policies shall address the following:

(a) Each resident upon admission shall be oriented to the facility, services, and staff.

(b) Each admission shall comply with R432-200-13(1).

(c) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(d) Linens and other items in contact with the resident shall be changed weekly or as the item is soiled.

(e) Each resident shall be encouraged and assisted to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises, and

(iv) redirecting residents interests as necessary.

(f) Residents must be reevaluated annually to determine if a less restrictive setting might be more appropriate to help them achieve independence.

(g) Each resident shall receive care and treatment to ensure the prevention of decubiti, contractions, and deformities.

(h) Each resident shall be provided with good nutrition and adequate fluids for hydration.

(i) All residents shall have ready access to water and drinking glasses;

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner;

(iii) Residents shall be provided with adapted equipment to assist in eating and drinking.

(i) Visual privacy shall be provided for each resident during treatments and personal care.

(j) Call lights or signals (where required) shall be answered promptly.

(k) Humidifier bottles on oxygen equipment shall be sterile and changed every 24 hours or at the manufacturers direction.

(4) Notification of Family.

The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. This notification shall be documented in the resident's record.

R432-200-17. Resident-Care Plans.

(1) General Provisions.

(a) A written resident-care plan, coordinated with nursing and other services, shall be initiated for each resident upon admission.

(b) The resident-care plan shall be personalized and indicate measurable and time-limited objectives, the actual plan of care, and the professional discipline responsible for each element of care.

(c) The resident care plan shall be developed, reviewed, revised, and updated at least annually through conferences with all professionals involved in the resident's care. Such conferences shall be documented.

(d) Each resident's care shall be based on this plan.

(e) The resident-care plan shall be available to all personnel who care for the resident.

(f) The resident and family shall participate in the development and review of the resident's plan.

(g) Upon transfer or discharge of the resident, relevant information from the resident-care plan shall be available to the responsible institution or agency.

(h) A licensed nurse or other clinical specialist, where appropriate, shall summarize, each month, the resident's status and problems identified in the resident-care plan.

(2) Resident-Care Plans Contents.

The resident-care plan shall include at least the following:

(a) Name, age, and sex of resident;

(b) Diagnosis, symptoms, complaints;

(c) A description of the functional level of the individual;

(d) Care objectives and time frames for accomplishment, reevaluation, and completion;

(e) Discipline or person responsible for each objective;

(f) Discharge plan;

(g) Date of admission;

(h) Name of attending physician or medical practitioner.

R432-200-18. Medication Administration.

(1) Standing Orders.

Standing orders for medications, treatments, and laboratory procedures shall not be used. All orders shall be written for the individual resident.

(2) Administration of Medication and Treatments.

Medication and treatment shall be administered as follows:

(a) No medication or treatment shall be administered except on the order of a person lawfully authorized to give such order.

(b) Medications and treatments shall be administered as prescribed and according to facility policy.

(c) All medications and treatments shall be administered by licensed medical or licensed nursing personnel. Student doctors and nurses may administer medication and treatment only in the course of study and when supervised by a licensed instructor or designated staff.

(d) Monitoring of vital signs and other observations done in conjunction with the administration of medication shall be carried out as ordered by the physician or practitioner and as indicated by accepted professional practice.

(e) Preparation of doses for more than one scheduled time of administration shall not be permitted.

(f) Medication shall be administered when ordered or as soon thereafter as possible but no more than two hours after the dose has been prepared.

(g) Medication shall be administered by the same person who prepared the dose for administration.

(h) Residents shall be identified prior to the administration of any drug or treatment.

(i) No medication shall be used for any resident other than the resident for whom it was prescribed.

(j) If the person who prescribed a medication does not limit the duration of the drug order or the number of doses, the facility's automatic stop-order policy shall indicate how long a drug may be administered. The prescriber shall be notified before the medication is discontinued.

(k) All orders for treatment or therapy shall contain:

(i) the name of the treatment or therapy,

(ii) the frequency and time to be administered,

(iii) the length of time the treatment or therapy is to continue,

(iv) the name and professional title of the practitioner who gave the order,

(v) the date of order, and

(vi) signature of the person prescribing the treatment or therapy.

(l) All nursing personnel shall comply with the provisions for administration of medication according to standards and ethics of the profession.

(m) Injectable medications shall be administered only by authorized persons.

(i) If a physician certifies that a resident is capable of administering his own insulin or oral medications, the resident may self-inject the prescribed insulin or self-administer the prescribed medications.

(ii) The physician's order, authorizing the resident's self-administration of medications, shall be documented and available for Departmental review.

R432-200-19. Behavior Management and Restraint Policy.

See R432-150-14.

R432-200-20. Resident Care Equipment.

(1) The facility shall provide equipment, in good working order, to meet the needs of residents.

(2) Disposable and single-use items shall be properly disposed of after use.

(3) Resident care equipment shall include at least the following:

(a) Self-help ambulation devices such as wheelchairs, walkers, and other devices deemed necessary in the resident plan of care. Facility policy may require that residents obtain their own equipment for long-term use;

(b) Blood pressure apparatus and stethoscopes, appropriate to the needs and number of residents;

(c) Thermometers appropriate to the needs of residents;

(d) Weight scales to weigh all residents;

(e) Bedpans, urinals, and equipment to clean them;

(f) Water pitchers, drinking glasses, and resident gowns;

(g) Drug service trays;

(h) Access to emergency oxygen including equipment for its administration;

(i) Emesis basins;

(j) Linens including sheets, blankets, bath towels, and wash cloths for not less than three complete changes for the facility's licensed bed capacity. There shall be a bedspread for each resident bed;

(k) Personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;

(l) An individual chart for each resident;

(m) Gloves (sterile and unsterile);

(n) Ice bags.

R432-200-21. Pharmacy Service.

The facility shall make provision for pharmacy service.

(1) This service shall be under the direction of a qualified pharmacist currently licensed in the state of Utah.

(2) The pharmacist may be retained by contract.

(3) The pharmacist shall develop policies, direct, supervise and assume responsibility for any pharmacy services offered in the facility.

(4) Pharmacy services shall meet R432-150-19.

R432-200-22. Dietary Services.

(1) Organization.

(a) There shall be an organized dietary service that provides safe, appetizing, and nutritional food service to residents.

(b) The service shall be under the supervision of a qualified dietetic supervisor or consultant.

(c) If a facility contracts with an outside food management company, the company shall comply with all applicable requirements of these rules.

(2) See R432-150-24.

R432-200-23. Social Services.

(1) The facility shall provide social services which assist staff, residents, and residents' families to understand and cope with residents' personal, emotional, and related health and environmental problems.

(2) This service may be provided by a consultant.

(3) See R432-150-17.

(4) Responsibilities.

Whether provided directly by the facility or by agreement with other agencies, social service personnel shall:

(a) Provide services to maximize each resident's ability to adjust to the social and emotional aspects of their condition, treatments, and continued stay in the facility;

(b) Participate in ongoing discharge planning to guarantee continuity of care;

(c) Initiate referrals to official agencies when the resident needs financial assistance;

(d) Maintain appropriate liaison with the family or other responsible person concerning the resident's placement and rights;

(e) Preserve the dignity and rights of each resident;

(f) Maintain records, including a social history and social-services-needs evaluation, (updated annually);

(g) Integrate social services with other elements of the resident-care plan.

R432-200-24. Recreation Services.

(1) There shall be an organized resident activity program for the group and for each resident in the facility.

(2) See R432-150-20.

R432-200-25. Laboratory and Radiology Services.

(1) The facility shall make provision for laboratory and radiology services.

(2) See R432-150-18, Laboratory Services, and R432-150-23, Ancillary Health Services.

R432-200-26. Dental Services.

The facility shall make provision for annual and emergency dental care for residents. Such provisions shall include:

(1) Developing oral hygiene policies and procedures with input from dentists;

(2) Presenting oral hygiene in-service programs by knowledgeable persons to both staff and residents;

(3) Allowing resident's freedom of choice in selecting their own private dentists;

(4) Developing an agreement with a dental service for those residents who do not have a personal dentist;

(5) Arranging transportation to and from the dentist's office.

R432-200-27. Specialized Rehabilitative Services.

(1) Organization.

(a) A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.

(b) Services may be offered either on-site or off-site.

(c) If the facility does not provide specialized rehabilitative services, the facility shall neither admit nor retain residents in need of such services.

(2) Personnel.

(a) Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.

(b) Therapists shall offer the full scope of services to the resident.

(c) All therapy assistants shall be qualified and shall work under the direct supervision of a licensed therapist at all times.

(d) Speech pathologists shall be licensed under Title 58, Chapter 41.

(3) Policies and Procedures.

(a) Services shall be provided only on the written order of an attending physician.

(b) Safe and adequate space and equipment shall be available commensurate with the needs of residents.

(c) An appropriate plan of treatment shall be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(d) An initial progress report shall be submitted to the attending physician two weeks after treatment has begun or when specified by the physician.

(e) The physician and therapist shall review and evaluate the plan of treatment monthly, unless, the physician recommends an alternate schedule in writing.

(f) There shall be documentation in the resident's record of the specialized plan of treatment.

R432-200-28. Medical Records.

(1) Organization.

(a) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation.

(b) There shall be written policies and procedures to accomplish these purposes.

(c) The medical record service shall be under the direction of a registered record administrator (RRA) or an accredited record technician (ART).

(d) If an RRA or an ART is not employed at least part-time, the facility shall consult at least annually with an RRA or ART according to the needs of the facility.

(e) A designated individual in the facility shall be responsible for day-to-day record keeping.

(2) Retention and Storage.

(a) Provision shall be made for the filing, safe storage, and easy accessibility of medical records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(ii) Records shall be protected against access by unauthorized individuals.

(b) Medical records shall be retained for at least seven years after the last date of resident care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(c) All resident records shall be retained within the facility upon change of ownership.

(d) When a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records.

(3) Release of Information.

(a) There shall be written procedures for the use and removal of medical records and the release of information.

(b) Medical records shall be confidential.

(i) Information may be disclosed only to authorized persons in accordance with federal, state, and local laws.

(ii) Requests for other information which may identify the resident (including photographs) shall require the written consent of the resident or guardian if the resident is judged incompetent.

(c) Authorized representatives of the Department may review records to determine compliance with licensure rules and

standards.

(4) Physician or Licensed Practitioner Documentation

Rubber-stamp signatures may be used in lieu of the written signature of the physician or licensed practitioner if the facility retains the signator's signed statement acknowledging ultimate responsibility for the use of the stamp and specifying the conditions for its use.

(5) Medical Record.

(a) Records shall be permanent (typewritten or hand written legibly in ink) and capable of being photocopied.

(b) Records shall be kept for all residents admitted or accepted for treatment and care.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each resident.

(d) All records of discharged residents shall be completed and filed within 60 days of discharge.

(e) All entries shall be authenticated including date, name or identified initials, and title of persons making entries.

(6) Contents of the Medical Record

A facility shall maintain an individual medical record for each resident which shall include:

(a) Admission record (face sheet) including the resident's name; social security number; age at admission; birth date; date of admission; name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and name, address, and telephone number of the attending physician;

(b) Admission and subsequent diagnoses and any allergies;

(c) Reports of physical examinations signed and dated by the physician;

(d) Signed and dated physician orders for drugs, treatments, and diet;

(e) Signed and dated progress notes including but not limited to:

(i) Records made by staff regarding the daily care of the resident;

(ii) Informative progress notes by appropriate staff recording changes in the resident's condition. Progress notes shall describe the resident's needs and response to care and treatment, and shall be in accord with the plan of care;

(iii) Documentation of administration of all "PRN" medications and the reason for withholding scheduled medications;

(iv) Documentation of use of restraints in accordance with facility policy including type of restraint, reason for use, time of application, and removal;

(v) Documentation of oxygen administration;

(vi) Temperature, pulse, respiration, blood pressure, height, and weight notations, when required;

(vii) Laboratory reports of all tests prescribed and completed;

(viii) Reports of all x-rays prescribed and completed;

(ix) Records of the course of all therapeutic treatments;

(x) Discharge summary including a brief narrative of conditions and diagnoses of the resident and final disposition;

(xi) A copy of the transfer form when the resident is transferred to another health care facility;

(xii) Resident-care plan.

R432-200-29. Housekeeping Services.

Organization.

(1) There shall be adequate housekeeping services to maintain a clean sanitary and healthful environment in the facility.

(2) See R432-150-26.

R432-200-30. Laundry Services.

(1) There shall be adequate laundry service to provide clean linens and clothing for residents and staff.

(2) See R432-150-27.

R432-200-31. General Maintenance.

(1) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually.

(2) See R432-150-28.

R432-200-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
March 3, 1995 26-21-5
Notice of Continuation December 15, 1997

R432. Health, Health Systems Improvement, Licensing.
R432-201. Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule.
R432-201-1. Legal Authority.

This rule is adopted pursuant to Section 26-21-13.5.

R432-201-2. Purpose.

The purpose of this rule is to meet the legislative intent pursuant to 26-21-13.5.

R432-201-3. Special Definitions.

(1) See R432-1-3.

(2) Special Definitions.

(a) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

(b) "Developmental Period" means the period between conception and the 18th birthday.

R432-201-4. Compliance.

All facilities governed by these rules shall be in full compliance at the time of initial licensure.

R432-201-5. Licensure.

(1) See Categories of licensure R432-200-4(2).

(2) See R432-2.

R432-201-6. Construction and Physical Environment.

See R432-12, Small Health Care Facility Rules.

R432-201-7. Governing Body and Management.

(1) Governing Body.

The facility shall identify an individual or group to constitute the governing body of the facility.

(2) Duties and Responsibilities.

The governing body shall:

(a) exercise general policy, budget, and operating direction over the facility;

(b) set the qualifications for the administrator of the facility;

(c) appoint the administrator of the facility.

(3) Compliance with Federal, State, and Local Laws.

The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

(4) Administrator.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(a) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(b) The administrator shall act as the administrator of no more than four small health care facilities and no more than a total of 60 beds in any type of licensed health care facility.

(c) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in each business day (at least four hours per week for each six clients) and as necessary to properly manage the facility and respond to requests by the Department and the public.

(d) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being.

(ii) It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(5) Administrator Responsibilities.

(a) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review.

(b) The job description shall include responsibility to insure the following duties are fulfilled:

(i) complete, submit, and file all records and reports required by the Department;

(ii) act as a liaison with the licensee, qualified mental retardation professional, QMRP, and other supervisory staff of the facility;

(iii) respond to recommendations made by the facility committees;

(iv) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(v) implement policies and procedures for the operation of the facility;

(vi) hire and maintain the required number of licensed and nonlicensed staff, as specified in these rules, to meet the needs of clients;

(vii) maintain facility staffing records for at least the preceding 12 months;

(viii) secure and update contracts for required professional and other services not provided directly by the facility;

(ix) verify all required licenses and permits of staff and consultants at the time of hire or effective date of contract;

(x) review all incident and accident reports and document action taken.

(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, as appropriate, the attending physician and constituted committee.

(C) Original incident and accident reports shall be kept on file in the facility and shall be available for review by the Department.

R432-201-8. Staff and Personnel.

(1) Staff Qualifications and Orientation.

(a) The administrator, QMRP, 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) Periodic employee performance evaluations shall be documented.

(c) All personnel shall have access to facility policy and

procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(2) Health Surveillance.

(a) The facility shall establish policies and procedures for the health screening of all facility personnel.

(b) See R432-150-10(4).

(c) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(3) Qualified Mental Retardation Professional, QMRP.

(a) Each client's active treatment program shall be integrated, coordinated and monitored by a qualified mental retardation professional.

(b) The qualified mental retardation professional shall meet the standards in R432-152-9(1)(b)(i) through (ii).

(4) Professional Program Services.

See R432-152-9(2)(a) through (f).

(5) Direct Care Staffing.

See R432-152-9(3)(a) through (d).

(6) Residential Living Unit Staff.

See R432-152-9(4)(a) through (d).

(7) Staff Training Program.

See R432-152-9(5)(a) through (d).

R432-201-9. Volunteers.

Volunteers may be utilized in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees. See R432-152-10.

R432-201-10. Contracts and Agreements.

(1) Contracts.

(a) If a service required under this subpart is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(b) The agreement shall:

(i) contain the responsibilities, functions, objectives, and other terms agreed to by both parties;

(ii) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(c) The facility shall assure that outside services meet the needs of each client.

(d) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in R432-200-6 and R432-152-22.

(2) Transfer Agreements.

(a) The licensee shall maintain, where appropriate, a written transfer agreement with one or more hospitals, or nearby health facilities to facilitate the transfer of clients and essential client information.

(b) The transfer agreement shall include provisions for:

(i) criteria for transfer;

(ii) appropriate methods of transfer;

(iii) transfer of information needed for proper care and treatment of the individual transferred;

(iv) security and accountability of personal property of the individual transferred;

(v) proper notification of the hospital and the responsible person before transfer;

(vi) the facility responsible for client care in the process of transfer;

(vii) client confidentiality.

R432-201-11. Client Rights.

(1) The facility shall ensure the rights of all clients.

(2) The facility shall:

(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;

(b) inform each client, parent, if the client is a minor, or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints and the right to due process, and each client shall be afforded the opportunity to voice grievances and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(f) ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day;

(n) permit a married couple both of whom reside in the facility to reside together as a couple.

(3) Client Finances.

(a) The facility shall establish and maintain a system that:

(i) assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients;

(ii) precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(b) The client's financial record shall be available on request to the client, parents, if the client is a minor, or legal guardian.

(c) All monies entrusted to the facility on behalf of the clients shall be kept in the facility or shall be deposited 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) When the amount of a client's money entrusted to the facility exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-201-11(3) above.

(e) 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 client funds from one facility with another.

(f) Upon discharge of a client, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within a reasonable time.

(g) Within 30 days following the death of a client, except in a medical examiner case, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. When a client dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court and a copy of said notice shall be filed with the Department.

(4) Communication with Clients, Parents, and Guardians.

The facility shall:

(a) promote participation of parent, if the client is a minor, and legal guardian in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from a client's family and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to a client, such as family, close friends, legal guardian and advocate, at any reasonable hour, without prior notice, consistent with the right of a client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care service to a client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations;

(f) notify promptly a client's parent or guardian of any significant incident, or change in a client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(5) Staff Treatment of Clients.

(a) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of a client.

(i) Staff of the facility shall not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff shall not punish a client by withholding food or hydration that contribute to a nutritionally adequate diet.

(b) The facility shall prohibit the employment of individuals with a conviction or prior employment history of child, client abuse, spouse abuse, neglect or mistreatment.

(c) The facility shall ensure that all allegations of mistreatment, neglect, or abuse, or injuries of unknown source, are reported immediately to the administrator and to other officials in accordance with 62A-3-302 through established procedures.

(d) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(e) The results of all investigations shall be reported to the administrator or designated representative and to other officials within five working days of the incident and, if the alleged violation is verified, appropriate corrective action shall be taken.

R432-201-12. Client Treatment Services.

See R432-152-13.

R432-201-13. Admissions, Transfers, and Discharge.

(1) A client who is admitted by the facility shall be in need of and receive active treatment services.

(2) See R432-152-14, Admissions, Transfer and Discharge.

R432-201-14. Behavior Management and Restraint Policy.

(1) See R432-152-15, Client Behavior and Facility Practice.

(2) See R432-152-13, Human Rights Committee.

R432-201-15. Physician Services.

See R432-152-16.

R432-201-16. Nursing Services.

See R432-152-17.

R432-201-17. Dental Services.

See R432-152-18.

R432-201-18. Pharmacy Services.

See R432-152-19.

R432-201-19. Laboratory Services.

See R432-152-20.

R432-201-20. Environment.

See R432-152-21.

R432-201-21. Emergency Plan and Procedures.

See R432-152-22.

R432-201-22. Smoking Policies.

Smoking policies shall comply with R432-200-8.

R432-201-23. Pets in Long-Term Care Facilities.

Each facility shall develop a written policy regarding pets in accordance with R432-150-21.

R432-201-24. Housekeeping Services.

See R432-150-26.

R432-201-25. Laundry Services.

See R432-150-27.

R432-201-26. Maintenance Services.

See R432-150-28.

R432-201-27. Food Services.

See R432-150-24.

R432-201-28. Record System.

See R432-152-29.

R432-201-29. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

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R432. Health, Health Systems Improvement, Licensing.
R432-270. Assisted Living Facilities.
R432-270-1. Legal Authority.

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

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) In addition:

(a) "Assessment" means documentation of each resident's ability or current condition in the following areas:

(i) memory and daily decision making ability;

(ii) ability to communicate effectively with others;

(iii) physical functioning and ability to perform activities of daily living;

(iv) continence;

(v) mood and behavior patterns;

(vi) weight loss;

(vii) medication use and the ability to self-medicate;

(viii) special treatments and procedures;

(ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;

(x) leisure patterns and interests;

(xi) assistive devices; and

(xii) prosthetics.

(b) "Activities of daily living (ADL)" are the following:

(i) personal grooming, including oral hygiene and denture care;

(ii) dressing;

(iii) bathing;

(iv) toileting and toilet hygiene;

(v) eating during mealtime;

(vi) self administration of medication; and

(vii) independent transferring, ambulation and mobility.

(c) "Dependent" means a person who meets one or all of the following criteria:

(i) requires inpatient hospital or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;

(ii) is unable to evacuate from the facility without the physical assistance of two persons.

(d) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.

(e) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(f) "Self-direct medication administration" means the resident can:

(i) recognize medications offered by color or shape; and

(ii) question differences in the usual routine of medications.

(g) "Semi-independent" means a person who is:

(i) physically disabled but able to direct his own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility or to a zone or area of safety with limited physical assistance of one person.

(h) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(i) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(j) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(k) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(l) "Social care" means:

(i) providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(m) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person;.

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

(a) the facility construction can meet the individual's needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) be of good moral character;

(e) complete the criminal background screening process defined in R432-35; and

(f) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-302, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the

facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; and

(e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Tuberculosis Control Rule.

(i) Skin testing must be conducted on each employee within two weeks of hire and after suspected exposure to a resident with active tuberculosis.

(ii) All employees with known positive reaction to skin tests are exempt from skin testing.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-2.

(e) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) 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, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to 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; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2-1101; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) The facility shall accept and retain only residents who

meet the following criteria:

(a) Residents admitted to a Type I facility shall meet the following criteria before being admitted:

(i) be ambulatory or mobile and be capable of taking life saving action in an emergency;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living; and

(iv) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(b) Residents admitted to a Type II facility may be independent and semi-independent, but shall not be dependent.

(5) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; or

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital or long-term nursing care.

(6) A Type I facility may accept or retain residents who:

(a) do not require significant assistance during night sleeping hours;

(b) are able to take life saving action in an emergency without the assistance of another person; or

(c) do not require significant assistance from staff or others with more than two ADL's.

(7) A Type II facility may accept or retain residents who require significant assistance from staff or others in more than two ADL's, provided the staffing level and coordinated supportive health and social services meet the needs of the resident.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, 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; and

(iii) for facility residents who are mentally ill, 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.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of

receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-270-12. Resident Assessment.

(1) Each person admitted to an assisted living facility shall have a personal physician or a licensed practitioner prior to admission.

(2) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(3) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by the administrator or a designated facility service coordinator.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

(a) a nursing assessment on each resident;

(b) general health monitoring on each resident; and

(c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a Department-approved wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation

plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (d) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications from a package set up by a licensed practitioner or licensed pharmacist which identifies the medication and time to administer. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the service plan.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication; and

(g) the review date.

(5) Each facility must have a licensed health care professional or licensed pharmacist document any change in the dosage or schedule of medication in the medication record. The delegating authority must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed

medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed by the person who makes the error.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Farenheit.

(c) The facility must develop and implement policies for the security and disposal of narcotics. Any disposal of controlled substances by a licensee or facility staff shall be consistent with the provisions of 21 CFR 1307.21.

(8) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf 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. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

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

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;

(c) termination date;

(d) reason for leaving;

(e) documentation of CPR and first aid training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation; and

(i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) the admission agreement;

(f) the resident assessment; and

(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including sufficient linen supply to permit a change in bed linens for the total number of licensed beds, plus an additional fifty percent of the licensed bed capacity.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use, the following:

(a) at least one washing machine and one clothes dryer; and

(b) at least one iron and ironing board.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.

(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to

guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Farenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) 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 residents.

(c) 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.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

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

(3) 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 non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) 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.

(5) 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.

(6) The facility must complete 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.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling personal funds.

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

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

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

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

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health facilities

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Notice of Continuation February 9, 2000	**26-21-1**

R432. Health, Health Systems Improvement, Licensing.
R432-300. Small Health Care Facility - Type N.
R432-300-1. Legal Authority.

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

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensing.

R432-300-4. Definitions.

(1) Refer to common definitions R432-1-3, in addition;

(2) "Dependent" means a person who meets one or all of the following criteria:

(a) requires inpatient hospital or 24 hour continual nursing care that will last longer than 15 calender days after the day on which the nursing care begins;

(b) is unable to evacuate from the facility without the physical assistance of two persons.

(3) "Health care setting" means a health care facility or agency, either public or private, that is involved in the provision or delivery of nursing care.

(4) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of a resident.

(5) "Owner or licensee" means a licensed nurse who resides in the facility and provides daily direct care during daytime hours to residents in the facility as opposed to simply working a duty shift in the facility.

(6) "Semi-independent" means a person who is:

(a) physically disabled, but able to direct his own care; or

(b) cognitively impaired or physically disabled, but able to evacuate from the facility with the physical assistance of one person.

(7) "Significant change" means a major change in a resident's status that is not self-limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the service plan.

(8) "Small Health Care Facility - Type N" means a home or a residence occupied by the licensee, who is a licensed nurse, that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the licensee.

R432-300-5. License Required.

A license is required to operate a Small Health Care Facility Type N, see R432-2.

R432-300-6. Criteria for Type N Facility.

The licensee must meet the following criteria to obtain a license for a Small Health Care Facility - Type N:

(1) provide care in a residence where the licensee lives full time;

(2) meet local zoning requirements to allow the facility to be operated at the given address;

(3) obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;

(4) have a physician assessment and approval for each resident's admission;

(5) provide daily, licensed nursing care; and

(6) provide 24-hour direct care staff available on the premises.

R432-300-7. Physical Environment.

(1) The licensee must provide comfortable living accommodations and privacy for residents who live in the facility.

(2) Bedrooms may be private or semi-private.

(a) Single-bed rooms must have a minimum of 100 square feet of floor space.

(b) Multiple-bed rooms must have a minimum of 80 square feet of floor space per bed and are limited to two beds.

(c) Beds shall be placed at least three feet away from each other.

(d) The licensee's family members or staff shall not share sleeping quarters with residents.

(e) Each resident shall have a separate twin size or larger sized bed.

(f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) may be used as a sleeping room for a resident.

(g) Each bedroom must have light and ventilation.

(h) Each bedroom must have a window to the outside which opens easily. Windows must have insect screens.

(i) Each bedroom must have a closet or space suitable for hanging clothing and personal belongings.

(j) Each bedroom and toilet room must have a trash container.

(k) The licensee must make available reading lamps in each resident room according to the individual needs of each resident.

(3) Toilets and bathrooms must provide privacy, be well-ventilated, and be accessible to and usable by all persons accepted for care.

(a) Toilets, tubs, and showers must have ADAAG approved grab bars.

(b) If the licensee admits a resident with disabilities, the bath, shower, sink, and toilet must be equipped for use by persons with disabilities in accordance with ADAAG.

(4) Heating, air conditioning, and ventilating systems must provide comfortable temperatures for the resident.

(a) Heating systems must be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(b) Cooling systems must be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(c) Facilities licensed after July 1, 1998, must comply with ventilation and minimum total air change requirements as outlined in R432-6-22 Table 2, which is adopted and incorporated by reference.

(5) Residents may be housed on the main floor only, unless an outside exit leading to the ground grade level is

provided from any upper or lower levels.

(6) At least one building entrance shall be accessible to persons with physical disabilities.

R432-300-8. Administration and Organization.

(1) The licensee is responsible for compliance with Utah law and licensing requirements, management, operation, and control of the facility.

(2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.

(3) The licensee must be a licensed nurse with at least two years experience working in a health care setting, and must provide nursing coverage on a daily basis during daytime hours of operation. Facilities licensed prior to July 1, 1998, that do not have a licensed nurse residing in the facility, must provide 24 hour certified nurse aide coverage.

(4) The licensee must employ sufficient staff to meet the needs of the residents.

(5) All employees must be 18 years of age, and successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee must orient employees to the residents' daily routine and train employees to assist the residents in activities of daily living.

(b) Employees must be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, licenses and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(6) The licensee is responsible to establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients.

(a) Each employee must, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health 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.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be in accordance with R388-804, Tuberculosis Control Rule.

(d) The licensee must report all infections and communicable diseases reportable by law to the local health department in accordance with R386-702-2.

R432-300-9. Facility Records.

(1) The licensee must maintain accurate and complete records that are filed, stored safely, and are easily accessible to staff and the Department.

(2) Records must be protected against access by unauthorized individuals.

(3) The licensee must maintain personnel records for each employee and retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) an employee application;

(b) the date of employment and initial policies and procedures orientation;

(c) the termination date;

(d) the reason for leaving;

(e) documentation of cardio-pulmonary resuscitation, first aid, and emergency procedures training;

(f) a health inventory;

(g) a food handlers permit;

(h) TB skin test documentation;

(i) documentation of criminal background check; and

(j) certifications, registration, and licenses as required.

(4) The licensee must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) an admission diagnoses and reason for admission;

(f) any known allergies;

(g) the admission agreement;

(h) a copy of an advanced directive or living will initiated by the resident;

(i) a physician's assessment;

(j) a resident assessment;

(k) a written plan of care;

(l) physician orders;

(m) daily nursing notes including temperature, pulse, respirations, blood pressure, height, and weight notations when indicated or as needed due to a change in the resident's condition;

(n) if entrusted to the facility, a record of the resident's cash resources and valuables; and

(o) incident and accident reports.

(5) Resident records must be retained for at least seven years following discharge.

R432-300-10. Acceptance and Retention of Residents.

(1) A Type N Small Health Care facility may accept semi-dependent residents.

(a) The licensee may accept one dependent resident only if the licensee has equipment and additional staff available to assist the dependent resident in the event of a facility emergency evacuation.

(b) The licensee must establish acceptance criteria which includes:

(i) the resident's health needs;

(ii) the residents's ability to perform activities of daily living; and

(iii) the ability of the facility to address the residents needs.

(2) A resident shall not be accepted nor retained by a Type "N" Small Health Care Facility when:

(a) The resident has active tuberculosis or serious communicable diseases;

(b) The resident requires inpatient hospital care; or

(c) The resident has a mental illness that manifests behavior which is suicidal, assaultive, or harmful to self or others.

(3) The licensee must request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the Type N facility.

R432-300-11. Transfer or Discharge Requirements.

(1) The licensee may discharge, transfer, or evict a resident for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases operation.

(2) Prior to transferring or discharging a resident, the licensee must serve a transfer or discharge notice to the resident and the resident's responsible person.

(a) The notice must be either hand-delivered or sent by certified mail.

(b) The notice must be made at least 30 days before the day on which the licensee plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge must:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident or the resident's responsible person can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident or responsible party may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, 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; and

(iii) for facility residents who are mentally ill, 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.

(4) The licensee must provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the licensee shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the licensee, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-300-12. Personal Physician.

(1) Each resident must have a personal physician. The physician's assessment must be completed prior to admission.

(2) The physician's signed assessment shall document:

(a) that the resident is capable of functioning in a Type N Small Health Care Facility;

(b) that the resident is free of communicable diseases or any condition which would prevent admission to the facility;

(c) a list of current medications including dosage, time of administration, route, and assistance required;

(d) type of diet and restrictions or special instructions;

(e) any known allergies; and

(f) any physical or mental limitations, or restrictions on activity.

R432-300-13. Nursing Care.

(1) Each Type N facility must provide nursing care services to meet the needs of the residents.

(2) A licensed nurse must be on-site working directly with residents on a daily basis in accordance with each resident's care plan and individual needs.

(3) Nursing practice must be in accordance with the Utah Nurse Practice Act Section 58-31b-102(10).

(4) Licensed nurses have the following responsibilities:

(a) direct the implementation of physician's orders;

(b) develop and implement an individualized care plan for each resident within seven calender days of admission, and direct the delivery of nursing care, treatments, procedures, and other services to meet the needs of the residents;

(c) review and update at least every six months the health care needs of each resident admitted to the facility and develop resident care plans according to the resident's needs and the physician's orders;

(d) review each resident's medication regimen as needed and immediately after medication changes to ensure accuracy;

(e) ensure that nursing notes describe the care rendered including the resident's response;

(f) supervise staff to assure they perform restorative measures in their daily care of residents;

(g) teach and coordinate resident care and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident; and

(h) plan and conduct documented orientation and in-service programs for staff.

(5) The licensed nurse must develop and maintain a

current health services policy and procedure manual that is to be reviewed and updated by the licensed nurse at least annually.

(a) The manual must be accessible to all staff and be available for review by the Department.

(b) The policy and procedure manual must address the following:

(i) bathing;

(ii) positioning;

(iii) enema administration;

(iv) decubitus prevention and care;

(v) bed making;

(vi) isolation procedures;

(vii) blood sugar monitoring procedures;

(viii) telephone orders;

(ix) charting;

(x) rehabilitative nursing;

(xi) diets and feeding residents;

(xii) oral hygiene and denture care;

(xiii) medication administration;

(xiv) Alzheimer's/dementia care;

(xv) universal precautions and blood-borne pathogens; and

(xvi) housekeeping and cleaning procedures.

(6) Each resident's care plan must include measures to prevent and reduce incontinence.

(a) The licensed nurse must assess each resident to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) The licensed nurse must document a weekly evaluation of the resident's performance in the bowel/bladder management program.

(d) Fluid intake and output must be recorded for each resident and evaluated at least weekly when ordered by a physician or nurse.

(7) The licensee must ensure that staff are trained in rehabilitative nursing.

(a) The licensee must provide daily and document rehabilitative nursing services for residents who require such services.

(b) Rehabilitative nursing services shall include the following:

(i) turning and positioning of residents as per physician's or nurse's orders;

(ii) assisting residents to ambulate;

(iii) improving resident's range of motion;

(iv) restorative feeding;

(v) bowel and bladder retraining;

(vi) teaching residents self-care skills;

(vii) teaching residents transferring skills; and

(viii) taking measures to prevent secondary disabilities such as contractures and decubitus ulcers.

R432-300-14. General Resident Care Policies.

(1) Each resident must be treated as an individual with dignity and respect in accordance with Residents' Rights R432-270-9.

(2) The licensee is responsible to develop and implement resident care policies. These policies must address the following:

(a) The licensee must orient each resident upon admission to the facility, services, and staff.

(b) Each resident must receive care to ensure good personal hygiene, including bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(c) Linens and other items in contact with the resident must be changed weekly or as the item is soiled.

(d) The licensee is responsible to encourage and assist each resident to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises; and

(iv) redirecting residents interests as necessary.

(e) Each resident must receive care and treatment to ensure the prevention of decubitus ulcers, contractures, and deformities.

(f) Each resident must receive good nutrition and adequate fluids for hydration.

(i) All residents must have ready access to water and drinking glasses.

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner.

(iii) Residents who require assistance with eating or drinking must be provided with adaptive equipment.

(g) Each resident has the right to visual privacy during treatments and personal care. Visual privacy may be provided by privacy curtains or portable screens.

(h) Facility staff must answer call lights or monitoring devices promptly.

(3) The licensee must notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the Type N facility license. This notification must be documented in the resident's record.

(4) The licensee is responsible to assist residents in making arrangements for medical and dental care including transportation to and from the medical or dental facility.

(5) The licensee must document and make available for Department review every accident or incident causing injury to a resident or employee. The documentation must include appropriate corrective action.

(6) The licensee is responsible to document and implement a quality improvement process that at least quarterly identifies problems, implements corrective actions, and evaluates the effectiveness of the corrective actions.

R432-300-15. Medications.

(1) A licensed health care professional must upon admission and at least every six months thereafter assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided must be documented on a Department approved form in each resident's service plan.

(2) Each resident's medication program must be

administered by means of one of the methods as described in (a) through (c) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the licensee must assess each resident's ability to safely have medications in the unit. If safety is a factor, the resident must keep medications in a locked container in the unit.

(b) The resident requires assistance from facility staff to administer medications. Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing that the resident takes the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(viii) Facility staff must document any staff assistance with medication administration including the type of medication and when it was taken by the resident.

(c) The resident's family or designated responsible person assists the resident with medication administration. Family members or a designated responsible person may set up medications in a package which identifies the medication and time to administer. If family members or a designated responsible person assists with medication administration, they must sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document the type of medication, the time administered, and the amount taken by the resident.

(3) Medication records must include the following information:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) the name of the medication, including prescribed dosage;

(d) the times and dates administered;

(e) the method of administration;

(f) signatures of staff or responsible persons administering the medication; and

(g) the review date.

(4) Any change in the dosage or schedule of medication administration must be ordered by the resident's licensed practitioner and be documented in the medication record. All facility staff or persons assisting with medication administration must be notified of the medication change.

(5) The licensee must have available in the facility a current pharmacological reference book with information on possible reactions and precautions to any medications taken by a resident.

(6) The resident's family and licensed practitioner must be notified if medications errors occur.

(7) Medications must be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, residents shall have timely access to the medication.

(b) Medications that require refrigeration must be stored separately from food items and at temperatures between 36 - 46 degrees F.

(8) The administration, storage, and handling of oxygen must comply with the requirements of the 1996 edition of NFPA 99, which is adopted and incorporated by reference.

(9) Facility policies must address the disposal of unused, outdated, or recalled medications.

(a) The licensee must return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) A licensed health care professional must document the return to the resident or the resident's responsible person of medication stored in a central storage.

(c) Disposal of controlled substances must comply with the Pharmacy Practice Act, which is adopted and incorporated by reference.

R432-300-16. First Aid.

(1) The licensee must ensure that at least one staff person is on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation, and emergency procedures to ensure that each resident receives prompt first aid as needed. First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(2) The licensee must ensure that a first aid kit is available at a specified location in the facility.

(3) The licensee must ensure that a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency is available at a specified location in the facility.

(4) Each facility must have an OSHA approved clean-up kit for blood borne pathogens.

R432-300-17. Activity Program.

(1) The licensee must provide activities for the residents to encourage independent functioning.

(2) The licensee must complete a resident interest survey and, with the resident's involvement, develop a monthly activity calendar.

(3) The activity program must include the residents' needs and interests to include:

(a) socialization activities;

(b) independent activities of daily living; and

(c) physical activities;

(4) A resident may participate in community activities away from the facility.

R432-300-18. Food Service.

(1) The licensee must provide three meals a day plus snacks, seven days a week, to all residents.

(a) The licensee must maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) Meals must be served with no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the

following:

(i) All food must be of good quality and be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) All food served to residents must be palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may be used as a beverage only upon the resident's request. It may be used in cooking and baking at any time.

(2) A different menu must be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents must be recorded and retained for three months for review by the Department.

(3) Meals must be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(4) Residents shall be encouraged to eat their meals in the dining room with other residents.

(5) The licensee must make available for review inspection reports by the local health department.

(6) If the licensee admits residents requiring therapeutic or special diets, an approved dietary manual must be available for reference when preparing meals. Dietitian consultation must be provided at least quarterly and documented for residents requiring therapeutic diets.

(7) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(8) All personnel who prepare or serve food must have a current Food Handler's Permit.

(9) Food service must comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, which is adopted and incorporated by reference.

R432-300-19. Housekeeping and Maintenance Services.

(1) The licensee must provide housekeeping and maintenance services to maintain a safe, clean, sanitary, and healthful environment.

(2) Entrances, exits, steps, and outside walkways must be maintained and kept free of ice, snow, and other hazards.

(3) The licensee must implement a cleaning schedule to ensure that furniture, bedding, linens, and equipment are cleaned periodically and before use by another resident.

(4) The licensee must control odors by maintaining cleanliness and proper ventilation. Deodorizers may not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) The licensee must provide laundry services to meet the needs of the residents.

(6) The licensee must ensure that all cleaning agents, bleaches, pesticides, or other poisonous, dangerous or flammable materials are stored in a locked area to prevent unauthorized access.

R432-300-20. Pets.

(1) The licensee may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets such as birds and hamsters must be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds must have procedures which prevent the transmission of psittacosis.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-300-21. Disaster and Emergency Preparedness.

(1) The licensee is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee is responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan must be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility fire extinguishing equipment;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations including specialized training to assist a dependent resident;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency

or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) 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 residents.

(c) The licensee must develop, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) The licensee must ensure that staff and residents receive instruction and training in accordance with the plans to respond appropriately in an emergency. The licensee must:

(a) annually review the procedures with existing staff and residents and conduct unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The licensee must be in charge during an emergency. If not on the premises, the licensee must make every effort to report to the facility, relieve subordinates and take charge.

(7) The licensee must provide in-house equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The licensee must post the following information in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes including the location of exits and fire extinguishers

R432-300-22. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-500. Freestanding Ambulatory Surgical Center Rules.
R432-500-1. Legal Authority.

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

R432-500-2. Purpose.

The purpose of this rule is to establish standards for the operation of a freestanding surgical facility which provides surgical services to patients not requiring hospitalization.

R432-500-3. Time for Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-500-4. Definitions.

(1) See common definitions R432-1-3.

(2) Special definitions.

(a) "Anesthesia service" means services for all patients who:

(i) receive general, spinal, or other major regional anesthesia, or

(ii) undergo surgery or other procedures when receiving either or both of the following:

(A) general, spinal, or other regional anesthesia;

(B) intravenous, intramuscular, or inhalation sedation or analgesia that may result in the loss of the patient's protective reflexes.

(b) "Continual" means repeated regularly and frequently in steady rapid succession.

(c) "Continuous" means prolonged without any interruption at any time.

(d) "Monitored Anesthesia Care" means intraoperative monitoring by qualified anesthesia personnel, of the patient's vital physiological signs, in anticipation of the need for administration of general anesthesia or of the development of adverse physiological patient reaction to the surgical procedure. Monitored anesthesia care also includes performing a preanesthetic examination, evaluating and prescribing anesthesia care required, and providing indicated postoperative anesthesia care.

(e) "Qualified Anesthetist" means an anesthesiologist, another qualified physician, dentist, oral surgeon, or certified registered nurse anesthetist, who:

(i) is licensed to provide anesthesia care in accordance with Utah laws for occupational and professional licensing,

(ii) is a member of the staff of the ambulatory surgical center,

(iii) has been determined by the facility to be competent, and

(iv) has been granted privileges to provide anesthesia care to patients in the facility.

(f) "Qualified Anesthesia Personnel" means qualified anesthetists the ambulatory surgical center appoints to the staff and grants privileges to provide anesthesia care to patients in the facility.

(g) "Extended Recovery Services" means patient care after the initial post surgery recovery period.

(h) "Initial Post Surgery Recovery Period" means patient care no longer than six hours beyond the completion of surgery.

R432-500-5. Licensure.

(1) License Required. See R432-2.

(2) Exempt facilities shall meet the provisions of Section 26-21-7. Physician based surgical centers shall request an exemption to this rule in order to apply for Medicaid/Medicare certification.

R432-500-6. General Construction Rules.

(1) See R432-13. Ambulatory Surgical Center Construction Rule.

R432-500-7. Administration and Organization.

(1) Direction.

(a) Each facility shall be operated by a licensee.

(b) If the licensee is other than a single individual, there shall be an organized functioning governing authority to assure accountability.

(c) The governing authority shall meet at least quarterly and keep written minutes of its meetings.

(2) Responsibilities.

(a) The licensee shall have the overall responsibility and authority for the organization.

(b) Responsibilities shall include at least the following:

(i) Comply with all applicable federal, state and local laws, rules and requirements;

(ii) Adopt and institute bylaws, operating room protocols, policies and procedures relative to the operation of the facility;

(iii) Appoint, in writing, a qualified administrator (the licensee, administrator, or medical director may be the same person) to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(iv) Appoint, in writing, a qualified medical director to advise and be accountable to the licensee for the quality of patient care;

(v) Ensure that patients requiring hospitalization are not admitted to the facility;

(vi) Appoint members of the medical staff and delineate their clinical privileges.

R432-500-8. Administrator.

(1) Direction.

(a) Each facility shall designate in writing an administrator who shall have freedom from other responsibilities to be on the premises of the facility a sufficient number of hours in the business day to manage the facility and to respond to appropriate requests by the Department.

(b) The administrator shall designate a person, in writing, to act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being and shall be available at the facility.

(ii) It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(c) The administrator shall be the direct representative of the board in the management of the facility and shall be responsible to the board for the performance of his duties.

(2) Qualifications.

The administrator and his designee shall be 21 years or

older and shall be experienced in administration and supervision of personnel and shall be knowledgeable about the practice of medicine to interpret and be conversant in surgery protocols.

(3) Duties and Responsibilities.

(a) The administrator's responsibilities shall be written in a job description and shall be available for Department review.

(b) Responsibilities shall include:

(i) Compliance with all applicable federal, state and local laws, and facility bylaws;

(ii) Develop, evaluate, update, and implement facility policies and procedures annually;

(iii) Maintain an adequate number of qualified and competent staff to meet the needs of patients;

(iv) Develop clear and complete job descriptions for each position;

(v) Notify appropriate authorities when a reportable disease is diagnosed;

(vi) Review all incident and accident reports and take appropriate action;

(vii) Establish a quality assurance committee that will respond to the quality and appropriateness of services and respond to the recommendations made by the committee;

(viii) Secure through contracts the necessary services not provided directly by the facility;

(ix) Receive and respond to the licensure inspection report by the Department.

R432-500-9. Medical Director.

(1) Direction.

(a) The licensee of the surgical facility shall retain, by formal agreement, a qualified physician to serve as medical director.

(b) The medical director shall have freedom from other responsibilities to assume professional, organizational, and administrative responsibility.

(c) The medical director shall be accountable to the governing authority for the quality of services rendered.

(2) Qualifications.

The physician designated as the medical director shall have at least the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have training and expertise in those branches of surgery and anesthesia services offered to provide supervision at the facility.

(3) Responsibilities.

(a) The medical director shall have overall responsibility for surgery and anesthesia services delivered in the facility.

(b) Applicable laws relating to use of anesthesia, professional licensure acts and facility protocols shall govern both medical staff and employee performance.

(c) The medical director shall be responsible for at least:

(i) Review and update facility protocols;

(ii) Periodically conduct reappraisals of medical staff privileges and revise those privileges as appropriate;

(iii) Recommend to the governing authority, names of qualified health care practitioners to perform approved procedures, and to recommend facility privileges to be granted;

(iv) Establish and maintain a quality assurance mechanism to review identified problems and take appropriate action;

(v) Coordinate, direct and evaluate all clinical operations of the facility;

(vi) Evaluate and recommend the type and amount of equipment needed in the facility;

(vii) Assure that a qualified physician available when patients are in the facility;

(viii) Ensure physician documentation is recorded immediately and reflects an accurate description of care given;

(ix) Assure that planned surgical procedures are within the scope of privileges granted to the physicians.

R432-500-10. Director of Nursing Services.

(1) Direction.

Each facility shall employ and designate in writing a registered nurse who will be responsible for the supervision and direction of the nursing staff and the operating room suite.

(2) Qualifications.

The director of nursing shall be a registered nurse who is qualified by training or education to supervise nursing services.

(3) Responsibilities.

(a) The director of nursing, in consultation with the medical director shall plan and direct the delivery of nursing care.

(b) The director of nursing shall be responsible for at least:

(i) Maintain qualified health care personnel that are available and used as needed under the supervision of a registered nurse;

(ii) Assure a licensed nurse is on duty when patients are in the facility;

(iii) Maintain the operating room register;

(iv) Review and update nursing care policies and procedures;

(v) Ensure that nursing documentation is recorded immediately and reflects an accurate description of care given;

(vi) Maintain policies and procedures for pre-operative and post-operative care;

(vii) Ensure post-operative instructions are in writing and are reviewed with the patient or other responsible person following surgery;

(viii) Supervise all non-physician direct patient care services, as defined in facility policy;

(ix) Review identified problems with the medical director through quality assurance mechanisms and take appropriate action;

(x) Ensure patient care policies including admission and discharge policies are reviewed annually. Patient care policies shall be developed and revised by a group representing all professionals involved in patient care.

R432-500-11. Staff and Personnel.

(1) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all personnel which shall protect the health an safety of personnel and patients. Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704. Communicable Disease rules.

(b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping

dermatitis, from direct contact with patients, patient care items, if direct contact may result in the transmission of the infection or the disease.

(c) This health screening shall be performed within the first two weeks of employment and as defined in facility protocols.

(d) Skin testing shall be done within two weeks of beginning employment. Employee skin testing by the Mantoux method and follow-up for tuberculosis shall be done in accordance with R386-702-5., Special Measures for the Control of Tuberculosis.

(i) Skin testing shall be conducted on each employee annually and after suspect exposure to a person with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(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.

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

(2) In-service Training and Orientation.

(a) There shall be planned and documented in-service training programs for all personnel.

(b) The frequency and content of training programs shall be defined in facility policy.

(c) The training program shall include a review of all facility policies and procedures.

(d) All personnel shall have access and knowledge of the facility's policy and procedure manuals.

R432-500-12. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for services not provided directly by the facility.

(b) Contracts shall include a statement that the contractor will conform to the standards required by these rules.

(2) Transfer Agreements.

(a) The licensee shall maintain hospital admitting privileges for all staff or a written transfer agreement with one or more full-service licensed hospitals located within an overall travel time of 15 minutes or less from the facility.

(b) The transfer agreement shall include provisions for:

(i) Transfer of information needed for proper care and treatment of the patient transferred;

(ii) Security and accountability of the personal effects of the patient being transferred.

R432-500-13. Quality Assurance.

(1) The administrator and the medical director, shall establish a quality assurance program and a quality assurance committee to review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care, and safety.

(2) General Provisions Quality Assurance Committee.

(a) The committee shall include a representative from the facility administration, the medical director, the director of nursing, and may also include other representatives, as appropriate.

(b) The committee shall meet at least quarterly and keep written minutes available for Department review.

(c) The committee shall report findings and concerns to the medical director, administrator, and governing authority as applicable.

R432-500-14. Emergency and Disaster.

Each facility has the responsibility to assure the safety and well-being of patients 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.

(1) General Provisions.

(a) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator should make every effort to get to the facility to relieve the administrator designee to take charge during an emergency.

(b) The licensee and the administrator shall be responsible for the development of a written emergency and disaster plan, coordinated with state and local emergency or disaster authorities.

(c) The plan shall be made available to all staff to assure prompt and efficient implementation (see R432-500-14(2)).

(d) The administrator and the licensee shall review and update the plan at least annually.

(e) The names and telephone numbers of facility staff, emergency medical personnel, and emergency service systems shall be conveniently posted.

(2) Emergency and Disaster Plan and Drills.

The facility shall have an internal and external emergency or disaster plan including the following:

(a) Evacuation of occupants to a safe place, as specified;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The receiving of patients to the facility from another location, including housing, staffing, medication handling, and record maintenance and protection;

(d) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(e) An inventory of available personnel, equipment, supplies and instructions and how to acquire additional assistance;

(f) Staff assignment for specific tasks during an emergency;

(g) Names and telephone numbers of on-call physicians and staff at each telephone;

(h) Documentation of emergency events;

(i) Emergency or Disaster drills, other than fire drills shall be held at least biannually, at least one per shift, with a record of time and date maintained. Actual evacuation of patients during a drill is optional;

(j) Notification of the Department if the facility is evacuated.

(3) Fire Emergencies.

The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) An evacuation plan shall identify:

(i) evacuation routes,

(ii) location of fire alarm boxes and fire extinguishers, and

(iii) emergency telephone numbers including the local fire department.

(b) The evacuation plan shall be posted at several locations throughout the facility.

(c) The emergency plan shall include fire containment procedures and how to use the facility alarm systems, extinguishers, and signals.

(d) Fire drills shall be held at least quarterly on each shift and documentation of the drill shall include a record of the time and date. Actual evacuation of patients during a drill is optional.

(4) Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-500-15. Patients' Rights.

(1) Written policies regarding the patient rights shall be made available.

(2) The policies and procedures shall ensure that each patient admitted to the facility shall be treated as an individual with dignity and respect and have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of the patient rights and of all facility rules that pertain to the patient;

(b) To be fully informed prior to admission of the treatment to be received, potential complications, and outcome;

(c) To refuse treatment and to be informed of the medical consequences of such refusal;

(d) To be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(e) To participate in decisions involved in their health care;

(f) To refuse to participate in experimental research;

(g) To be assured confidential treatment of personal and medical records and to approve or refuse 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;

(h) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-500-16. Patient Care Services.

(1) Each patient shall be under the care of a member of the medical staff or under contract.

(2) Medical Staff Bylaws shall establish the credentialing process and shall include the delineation of professional staff privileges.

(3) Responsibilities.

(a) The attending member of the medical staff including any non-physician specialist shall be responsible for the quality of patient care delivered and the supervision of patients admitted to the facility.

(b) All facility staff members and those under contract by the facility shall comply with current laws, facility protocols and current standards as interpreted by the medical director.

R432-500-17. Extended Recovery Services.

(1) Extended recovery care services provided by a Freestanding Ambulatory Surgical Center shall not exceed 24 hours. The facility shall provide services to no more than three patients, anywhere within the facility, between the hours of 10:00 p.m. and 6:00 a.m.

(2) Extended recovery care services shall be integrated with other departments and services of the facility.

(3) Extended recovery care services shall have policies and procedures that describe the nature and extent of the extended recovery services provided, which are consistent with ambulatory surgery and anesthesia services.

(4) A minimum of two health care workers, one of which shall be a registered nurse with Advanced Cardiac Life Support certification (ACLS), shall be on duty when patients are in the extended recovery care unit.

(5) In addition to the items required in a patient's medical record under section R432-500-22, the physician shall document the following:

(a) the reason(s) or need for a patient's admission to the extended recovery service, and

(b) dietary orders to meet the nutritional needs of the patient.

(6) The facility shall obtain a Food Service Establishment Permit, if required by the local health department.

(a) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(b) All personnel who prepare or serve food shall observe personal hygiene and sanitation practices which protect food from contamination.

R432-500-18. Nursing Services.

(1) Direction.

Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) Organization.

All non-medical patient services shall be under the general direction of the director of nursing, except as exempted by facility policy.

(3) Responsibilities.

(a) Nursing service personnel shall be responsible to plan and deliver nursing care, and assist with treatments and procedures.

(b) All nursing personnel shall maintain a current Utah license.

(4) Equipment.

(a) The facility shall provide equipment in good working order to meet the needs of patients.

(b) The type and amount of equipment shall be indicated in facility policy and approved by the medical director.

(c) The following equipment shall be available to the operating suite:

(i) Emergency call system;

(ii) Cardiac Monitor;

(iii) Ventilation support system;

(iv) Defibrillator;

(v) Suction equipment;

(vi) Equipment for Cardiopulmonary Resuscitation and Airway Management;

(vii) Portable Oxygen; and

(viii) Emergency Cart.

R432-500-19. Pharmacy Service.

Pharmacy space and equipment required depends upon the type of drug distribution system used, number of patients served, and extent of shared or purchased services.

(1) Direction.

(a) There shall be a pharmacy supply under the direction of a pharmacist.

(b) If the facility does not have a staff pharmacist, it shall retain a consultant pharmacist by written contract.

(c) There shall be written policies and procedures to govern the acquisition, storage, and disposal of medications.

(d) The medical director and facility pharmacist shall approve these policies.

(e) The quality and appropriateness of medication usage shall be monitored by the Quality Assurance Committee.

(2) Pharmacy Supply.

(a) Provision will be made to supply necessary drugs and biologicals in a prompt and timely manner.

(b) A current pharmacy reference manual shall be available to all staff.

(3) Storage.

(a) All medications, solutions, and prescription items shall be kept secure and separate from non-medicine items in a conveniently located storage area.

(b) An accessible emergency drug supply shall be maintained in the facility if the facility does not have a pharmacy.

(i) The emergency drug supply shall be approved by the medical director and the facility pharmacist.

(ii) Contents of the emergency drug supply shall be listed on the outside of the container. An inventory of the contents shall be documented by nursing staff after each use and at least weekly.

(iii) Used items shall be replaced within 48 hours.

(c) Medications stored at room temperature shall be maintained within 59 - 80 degrees F. (15 to 30 degrees C.). Refrigerated medications shall be maintained within 36 - 46 degrees F. (2 to 8 degrees C.).

(d) Medications and other items that require refrigeration shall be stored securely and separately from food items.

(4) Controlled Drugs.

(a) Drugs shall be accessible only to licensed nursing, pharmacy, and medical personnel as designated by facility policy. Schedule II drugs shall be kept under double-lock and separate from other medication.

(b) Separate records of drug use shall be maintained on each Schedule II drug.

(i) Records shall be accurate and complete including patient name; drug name; strength; administration documentation; and name, title, and signature of person administering the drug.

(ii) The record shall be reconciled at least daily and retained for at least one year.

(iii) If medications are supplied as part of a unit-dose medication system, separate records are not required.

(c) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition of the drugs can be readily traced.

(5) Disposal of Drugs.

(a) All discontinued and outdated drugs, including those listed in Schedules II, III or IV of the "Federal Comprehensive Drug Abuse Prevention and Control Act of 1970," shall be destroyed promptly by the facility. The destruction shall be witnessed and documented by two licensed members of the facility staff, preferably a physician and a registered nurse designated by the facility.

(b) The name of the patient, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction and the signatures of the witnesses shall be recorded in a separate log kept for this purpose. The log shall be retained for at least three years.

(6) Administration.

(a) A single dose or pre-packaged medications may be sent with the patient upon discharge, when ordered by the discharging physician.

(b) Use of multiple dose medications shall be released in compliance with Utah pharmacy law.

(c) All medications used shall be documented in the patient's medical record.

R432-500-20. Anesthesiology Services.

Organization.

(1) The licensee shall provide facilities and equipment for the provision of anesthesia services commensurate with the surgical procedures planned for the facility.

(2) The medical director shall provide for the safety of anesthesia services administered to patients by qualified anesthesia personnel through written policies and protocols approved by the medical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(a) The medical staff shall appoint a director of anesthesia services by name and in writing who shall meet the following requirements:

(i) be licensed to practice medicine in Utah;

(ii) have training and expertise in anesthesia services offered to ensure adequate supervision of patient care.

(b) The director of anesthesia services shall implement, coordinate, and insure the quality of anesthesia services provided in the facility.

(c) The medical staff shall define in writing, and approve, the responsibilities of the director of anesthesia services.

(d) The medical staff or the director of anesthesia services shall clearly delineate in writing both the responsibilities of, and the privileges granted to, each qualified anesthetist.

(e) Only qualified anesthesia personnel shall provide anesthesia care.

(f) Qualified anesthesia personnel shall meet the following:

(i) Provide anesthesia care within the scope of facility-approved privileges and individual licenses;

(ii) Provide monitored anesthesia care for a patient who is administered sedation that may result in a loss of protective

reflexes;

(g) During the surgical procedure, a qualified anesthetist shall be responsible for the following:

(i) monitor, by continuous presence in the operating room (except for short periods of time for personal safety, such as radiation exposure), a patient who is undergoing a surgical procedure and who is receiving general anesthetics, regional anesthetics, or monitored anesthesia care;

(ii) continually evaluate a patient's oxygenation, ventilation, and circulation, and have means available to measure temperature during administration of all anesthetics.

(h) The non-physician anesthetists shall be supervised by and perform duties under the direction of the director of anesthesia services, the anesthesiologist, or the operating surgeon.

(i) The patient and operating surgeon shall be informed prior to surgery if anesthesia services will be performed by a non-physician qualified anesthetist.

(j) A qualified physician shall be available in the facility to care for any medical emergency, including an anesthetic-related emergency, when the operating team consists entirely of non-physicians, and the patient is undergoing procedures with regional, general, or monitored anesthesia care.

(3) Policies and Procedures.

(a) The medical staff shall develop, implement, and review the anesthesia quality assurance program.

(b) The written policies and procedures for anesthesia services shall be reviewed annually and enforced by the medical staff.

(c) Written anesthesia service policies shall include the following:

(i) Anesthesia care policies and procedures for preanesthesia evaluation, preanesthesia care including documenting a time-based record of events, and postanesthesia care;

(ii) A qualified anesthetist, or the physician responsible for delivering the patient's anesthesia, shall conduct a preanesthesia evaluation, and document the evaluation in the patient's medical record;

(iii) The preanesthesia evaluation shall include the following information:

(A) planned anesthesia choice;

(B) assessing anesthesia risk;

(C) anticipated surgical procedure;

(D) current medications and previous untoward drug experiences;

(E) prior anesthetic experiences;

(F) any unusual potential anesthetic problems.

(G) Information required in the pre-anesthesia evaluation must be documented in the patient's medical record prior to inducing anesthesia.

(d) Qualified anesthesia personnel shall remain with the patient until the patient's status is stable. The qualified anesthetist or the anesthetist's qualified designee shall remain with the patient until the patient's protective reflexes have returned to normal, and it is determined safe as defined in facility policy.

(e) The director of anesthesia services shall define the mechanism for the release of patients from postanesthesia care.

(i) The facility shall release a patient only when a member of the medical staff determines that it is safe and appropriate to discharge the patient.

(ii) Each patient who is admitted to an ambulatory surgical facility, and who receives other than unsupplemented local anesthesia, shall be discharged in the company of a responsible adult.

R432-500-21. Laboratory and Radiology Services.

(1) General Requirements.

(a) The facility shall make provisions, as appropriate, for laboratory, radiology and associated services according to facility policy.

(b) Services shall be provided with an order from a physician or a person licensed to prescribe such services. The order for laboratory and radiology services and the test results shall be included in the patient's medical record.

(c) If services are provided by contract, a CLIA certified, State- approved laboratory shall perform such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

(2) Facility Laboratory Services.

If the facility provides CLIA certified or state approved laboratory service, these services shall comply with R432-100-26.

(3) Facility Radiology Services.

If the facility provides its own radiology services, these services shall comply with R432-100-29.

R432-500-22. Medical Records.

(1) Direction.

Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval for staff use. There shall be written policies and procedures to accomplish these purposes.

(2) Medical Record Organization.

(a) A permanent individual medical record shall be maintained for each patient admitted.

(b) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Stamps are not acceptable unless a co-signature is present. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to the patient. Automated Record Systems may be utilized provided the medical record content maintained meets the requirements as defined within these rules.

(d) All records of discharged patients shall be completed and filed within a time frame established by facility policy. The physician has the responsibility to complete the medical record.

(3) Medical Record Content.

Each patient's medical record shall include the following:

(a) An admission record (face sheet) that includes the name, address, and telephone number of the patient, physician and responsible person and the patient's age and date of admission;

(b) A current physical examination and history, including allergies and abnormal drug reactions;

(c) Informed consent signed by the patient or, if applicable, the patient's representative;

(d) Complete findings and techniques of the operation;

(e) Signed and dated physician orders for drugs and treatments;

(f) Signed and dated nurse's notes regarding care of the patient. Nursing notes shall include vital signs, medications, treatments and other pertinent information;

(g) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient's final disposition, to include instructions given to the patient and responsible person;

(h) The pathologist's report of human tissue removed during the surgical procedure, if any;

(i) Reports of laboratory and x-ray procedures performed, consultations and any other pre-operative diagnostic studies;

(j) Pre-anesthesia evaluation.

(4) Retention and Storage.

(a) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional three years.

(b) All patient records shall be retained by the new owners upon change of ownership.

(c) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(5) Release of Information.

(a) Medical record information shall be confidential.

(i) There shall be written procedures for the use and removal of medical records and the release of patient information.

(ii) Information may be disclosed only to authorized persons in accordance with federal and state laws, and facility policy.

(iii) Requests for information identifying the patient (including photographs) shall require written consent by the patient.

(b) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

R432-500-23. Housekeeping Services.

(1) Organization.

There shall be housekeeping services to maintain a clean, sanitary, and healthful environment. If the facility contracts for housekeeping services with an outside agency, there shall be a signed, dated agreement that details all services provided. The housekeeping service shall meet all the requirements of this section.

(2) Policies and Procedures.

Written housekeeping policies and procedures shall be developed and implemented by the facility, and reviewed and updated annually.

(3) Personnel.

A sufficient number of housekeeping staff shall be employed to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(4) Equipment and Supplies.

(a) Housekeeping equipment shall be suitable for institutional use and properly maintained.

(b) Cleaning solutions for floors shall be prepared according to manufacturer's instructions and be checked periodically to insure proper germicidal concentrations are maintained.

(c) There shall be sufficient numbers of noncombustible trash containers. Lids shall be provided where appropriate.

(d) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used for storage.

(e) Throw or scatter rugs shall not be used in the main traffic areas of the facility or in exitways.

R432-500-24. Laundry Services.

(1) Direction.

(a) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(i) Processing may be done within the facility, in a separate building (on or off site), or in a commercial or shared laundry.

(ii) If the facility contracts for laundry service, there shall be a signed, dated agreement that details all services provided.

(iii) The laundry service shall meet all requirements of this section.

(b) If the facility processes laundry on the premises, a qualified person shall be employed to direct the facility's laundry service. The person shall have experience or training in the following:

(i) Proper use of the chemicals in the laundry;

(ii) Proper laundry procedures;

(iii) Proper use of laundry equipment;

(iv) Appropriate facility policy and procedures;

(v) Appropriate federal regulations, state rules, and local laws.

(2) Physical Plant.

(a) If laundry is processed by a commercial laundry which is not part of the facility, the facility must provide at least the following:

(i) A separate room, vented to the outside, for holding and sorting soiled linen until ready for transport;

(ii) A central, clean linen storage area in addition to the linen storage provided in each unit. The central storage capacity shall be sufficient for the facility's operation;

(iii) A separate storage area to maintain clean and soiled linen carts out of traffic areas;

(iv) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(b) If laundry is processed by the facility (within or in a separate building), provision shall be made for the following:

(i) Receiving, holding and sorting room for control and distribution of soiled linen. Soiled linen chutes may empty into this room;

(ii) A laundry room with washing machines adequate for the quantity and type of laundry to be processed;

(iii) A laundry room with dryers adequate for the quantity and type of laundry to be processed;

(iv) A clean storage room with space and shelving adequate to store one half of all laundry being processed;

(v) Convenient access to employee lockers and lounge;

(vi) Storage for laundry supplies;

(vii) Storage area to park clean and soiled linen carts out of traffic;

(viii) Traffic pattern through laundry area shall be:

(A) From building corridor to receiving and sorting/soiled linen room;

(B) From sorting soiled linen room to wash room;

(C) From wash room to dry room. The dry room shall be separated from the wash room by a wall with a door;

(D) From dry room to clean storage or building corridor (covered and protected);

(E) Air flow shall be positive in direction; from clean to soiled, to exterior.

(3) Policies and Procedures.

Each facility shall develop and implement policies and procedures relevant to operation of the laundry. These policies and procedures shall be reviewed and updated annually, and shall address the following:

(a) Methods to handle, store, transport and process clean, soiled, contaminated, and wet linens;

(b) Water temperature to wash laundry that is at least 150 degrees F (66 degrees C) unless the laundry equipment manufacturer recommends other temperatures. An automatic chemical sterilizing system may be used in lieu of 150 degrees F water with Department approval;

(c) Collection and transportation of soiled linen to the laundry in closed, leak-proof laundry bags or covered impermeable containers. Separate linen carts labeled "SOILED" or "CLEAN LINEN" shall be constructed of washable material and shall be laundered or suitably cleaned to maintain sanitation;

(d) The training of laundry personnel in proper procedures for laundry infection control;

(e) Provision for adequate laundry equipment (washers, dryers, linen carts, transport carts) to maintain clean laundry for the facility;

(f) Maintenance of laundry equipment in proper working condition;

(g) Provision for a lavatory with hot and cold running water, soap and sanitary towels within the laundry area.

(4) Clean Linen.

(a) Clean linen shall be stored, handled, and transported in a manner to prevent contamination. Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.

(b) Clean linen must be covered if stored in alcoves or transported through the facility. Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(c) Linens shall be maintained in good repair. A supply of clean linen and other supplies shall be provided and available to staff to meet the needs of patients.

(5) Soiled Linen.

(a) Soiled linen shall be handled, stored and processed to prevent the spread of infections. Soiled linen shall be sorted by methods to protect from contamination, and as specified in facility policy.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors and areas occupied by patients, and precludes cross contamination of clean linens. Laundry chutes shall be maintained in a clean sanitary condition.

R432-500-25. Maintenance, Physical Environment, and Safety.

Surgical centers shall provide a safe and sanitary environment. All ambulatory surgical facilities shall comply with this Section.

(1) Direction.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance, or if the facility contracts for maintenance services, there shall be a signed, dated agreement that specifies agreement to comply with all requirements of this section.

(b) The facility shall develop and implement a written maintenance program (including preventive maintenance) to ensure continued equipment function and sanitary practices throughout the facility.

(2) Policies and Procedures.

(a) Each facility shall develop and implement maintenance, safety, and sanitation policies and procedures that shall be reviewed and updated annually.

(b) When maintenance is performed by an equipment-service company, the company shall certify that work performed, is in accordance with acceptable standards. This certification shall be retained by the facility for review.

(c) A pest control program shall be developed to ensure the facility is free from vermin and rodents which shall be conducted in the facility buildings and grounds by a licensed pest control contractor or an employee trained in pest control procedures. All openings to the outside of the facility shall prevent the entrance of insects and vermin.

(d) Architectural and engineering drawing, specification books, and maintenance literature concerning the design and construction of built-in systems should be available for use by maintenance and safety personnel.

(e) Instructional information, cautions, specifications, and operational data on all facility equipment shall be available for reference by all concerned departments.

(f) Systems-disconnects location information shall be readily available.

(g) Documentation shall be maintained for Department review of the pest control program and other maintenance activity.

R432-500-26. General Maintenance.

(1) Equipment used in the facility shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(2) Draperies, carpets, and furniture shall be maintained clean and in good repair.

(3) Electrical systems including appliances, cords, equipment, call systems, switches, and grounding systems shall be maintained to assure safe functioning.

(4) Heating and cooling systems shall be inspected and documented annually to assure safe operation. Written records of maintenance on high intensity (90%) filters and humidifiers shall be kept.

(a) Heating equipment shall be capable to maintain 80

degrees F.

(b) Cooling equipment shall be capable to maintain 74 degrees F.

(5) Electric circuits shall be tested annually to show that phase, voltage, amperage, grounding and load balancing are as required.

(6) Grounding systems in operating rooms shall be tested monthly and documented.

(7) Medical gas systems shall be inspected quarterly.

(8) Steam systems driving autoclaves and other sterilization equipment shall be tested regularly to assure proper operating temperatures, volumes, and pressures. Gauges shall be tested annually.

(9) All switch-over devices, relays, breakers, outlets, and receptacles in the emergency system shall be tested quarterly.

(10) Air supplies, main burners and stack afterburners shall be inspected annually.

(11) All new equipment shall be tested prior to use.

(12) All patient care equipment shall be tested as specified in facility policy but at least according to manufacturer's specifications.

(13) All other electric and electronic equipment shall be tested at least annually.

(14) All testing and inspections of systems and equipment shall be done by qualified persons.

(15) Records shall be maintained of all inspections and testing.

(16) Maintenance work performed shall be documented. All required records including maintenance, safety inspections, and drill schedules shall be retained for two years or from the date of the last major inspection.

(17) All buildings, fixtures, equipment, spaces, and sanitation systems shall be maintained in operable condition.

(18) Any chemical of a poisonous nature shall be properly labeled and shall not be stored with patient care items.

R432-500-27. Air Filters.

All air filters installed in heating, air conditioning, and ventilation systems, shall be inspected and filters replaced as needed to maintain the systems in operating condition.

R432-500-28. Emergency Electric Service.

(1) The facility shall make provision for an emergency generator to provide power to critical areas essential for patient safety in the event of an interruption in normal electrical power service.

(2) There shall be provision for emergency exit lighting in accordance with NFPA 101.

(3) Flash lights shall be available for emergency use by staff.

(4) Testing Emergency Power Systems.

(a) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(i) The emergency power generator shall be tested weekly and run under load for a period of 30 minutes monthly.

(ii) Transfer switches and battery operated equipment shall be tested at approximately 14-day intervals.

(b) A written record of inspection, performance, test period, and repair of the emergency generator shall be maintained on the premises for review.

R432-500-29. Storage and Disposal of Garbage, Refuse, and Waste.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-500-30. Provisions for Gas Usage.

(1) Flammable anesthetic agents or chemicals may not be used unless the building is properly constructed for its use in accordance with NFPA guidelines.

(a) Compressed gases and flammable liquids shall be stored safely. All compressed gas cylinders in storage shall be capped and secured. Oxidizing agents may not be stored with flammables.

(b) Oxygen and flammable agents shall be stored away from combustibles. Liquid flammable agents shall be stored in metal cabinets with no more than ten gallons of any one flammable liquid or 60 gallons total of flammable liquids stored per cabinet. Warning signs shall be posted when compressed gases or flammable liquids are used.

(2) Equipment shall be available to extinguish liquid oxygen and enriched gases. Employees shall be trained in the proper use of equipment and containment of combustions.

(3) When using oxygen, provision shall be made for at least the following:

(a) Safe handling and storage;

(b) Facility personnel shall not transfer gas from one cylinder to another;

(c) Piped oxygen system shall be tested in accordance with The NFPA 56F and 56K and a written report shall be filed as follows:

(i) Upon completion of initial installation;

(ii) Whenever changes are made to the system;

(iii) Whenever the integrity of the system has been breached;

(iv) There shall be a scavenging system for evacuation of anesthetic waste gas.

R432-500-31. Lighting.

(1) Sodium and mercury vapor lights shall not be used inside the facility, but may be used as a source of exterior lighting.

(2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least of 20 foot-candles of light at floor level.

(3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(4) Other areas shall be provided with the following minimum foot candles of light at working surfaces:

(a) Operating rooms : 50 Foot-candles

(b) Medication preparation areas : 50 foot-candles

(c) Charting areas : 50 foot-candles

(d) Reading areas : 50 foot-candles

(e) Laundry areas : 30 foot-candles

(f) Toilet, bath, and shower rooms : 30 foot-candles

(g) Nutritional area : 30 foot-candles.

R432-500-32. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by staff and patrons. The facility shall maintain hot water delivered to patient care areas at temperatures between 105 and 115 degrees F. Temperatures shall be regularly tested and a record maintained as part of the preventive maintenance program.

(4) There shall be grab bars at each bathroom facility used by patients.

(5) Water sterilizers, exchangers, distilleries, deionizers and filters shall be functional and shall provide the quality of water intended in each application.

R432-500-33. Sanitation Facilities.

(1) Handwashing and toilet facilities shall be adequate in number and convenient for use by employees and patrons. Facilities shall be kept clean, in good repair and adequately ventilated.

(2) An adequate supply of hand cleansing soap and a supply of sanitary towels or approved hand drying appliance shall be available for use. Common towels are prohibited.

(3) Adequate and conveniently located toilet facilities shall be provided for employees and patrons. Toilet facilities shall be kept clean, in good repair, and free of objectionable odors. They shall be adequately ventilated.

(4) All toilet and bathroom doors used by patients and opening inward into the bath or toilet room shall also allow the door to be removed from the outside of the bath or toilet room.

(5) Other Safety and Sanitation Provisions.

(a) Trash chutes, laundry chutes, and dumb waiters shall be safe and sanitary. Trash and laundry chutes, elevators, dumb waiters, message tubes, and other such systems shall not pump contaminated air into clean areas.

(b) The use of exposed element portable heaters is prohibited.

(c) If virulent agents are tested in the facility, a shielded exhaust hood or other equivalent protective device(s) shall be provided.

(d) Building, grounds, walkways, and parking shall be free of hazards and in good repair. Parking and walkways shall be clear of snow and ice. A clear unobstructed path shall be maintained from all emergency exits to a public way.

(e) Floors shall be maintained so they are in good repair. Floors in labs, toilet rooms, baths, kitchens, and isolation rooms shall be of ceramic tile, roll-type vinyls, or seamless bonded flooring which is resilient, non-absorbent, impervious, and easily cleaned.

(f) Traffic in all patient care areas shall be monitored. Only authorized individuals shall have access to sterile areas.

KEY: health facilities

May 1, 1996 26-21-5
Notice of Continuation December 15, 1997 26-21-16

R432. Health, Health Systems Improvement, Licensing.
R432-550. Birthing Centers (Five or Less Birth Rooms).
R432-550-1. Legal Authority.

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

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers are restricted to five or fewer birth rooms.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful prenatal screening for potential problems throughout pregnancy.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated pregnancy, labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during pregnancy, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during pregnancy, childbirth and recovery.

(d) "Clinical staff" means the physicians, certified nurse-midwives and other licensed health care practitioners appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

R432-550-5. Licensure.

License Required. See R432-2.

R432-550-6. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-7. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body.

(2) The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Sections 13-7-1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) notify the licensing agency in writing no later than five days after a change of administrator, identifying the name of the new administrator and the effective date of the change;

(i) appoint members of the clinical staff and delineate their clinical privileges;

(j) review and approve at least annually a quality assurance program for birthing center operation and patient care provided. R432-550-12.

(k) establish a system for financial management and accountability;

(l) provide for resources and equipment to provide a safe working environment for personnel;

(m) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(n) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-12.

(3) Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of pregnancy, labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center;

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the benefits, risks and eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing for the education of patients, family and

support persons in postpartum and newborn care;

(vii) planning for post-discharge follow-up of patients;

(viii) registering birth, fetal death or death certificates in accordance with Sections 26-2-5, 26-2-13, 26-2-14, 26-2-23 and rules promulgated pursuant thereto in R436.

(ix) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-7, Special Measures for the Control of Ophthalmia Neonatorum;

(x) performing phenylketonuria (PKU) and other metabolic disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section 26-10-6;

(xi) providing for prenatal laboratory screening:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella;

(E) syphilis;

(F) urine glucose and protein.

(xii) providing for infection control to include housekeeping; cleaning, sterilization, sanitization and storage of supplies and equipment; and prevention of transmission of infection in personnel, patients and visitors.

R432-550-8. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority;

(f) review and act on incident or accident reports.

R432-550-9. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises when patients are in the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff;

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-10. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment;

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) 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 patients commensurate with the services offered.

(5) An employee placement health evaluation shall include at a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method shall be done annually or at the time of exposure and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(8) The birthing center shall provide staff development programs to include at least documented orientation for new staff and ongoing in-service training for personnel.

(a) Facility policy shall define an orientation program, standardized for employee categories of responsibility, and shall specify the time for completion.

(b) The in-service training program shall define the frequency and content of training to include:

(i) an annual review of facility policies and procedures;

(ii) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(c) Personnel shall have ready access to the facility's policy and procedure manuals when on duty.

(9) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-11. Contracts and Agreements.

(1) The licensee shall secure a written contract or agreement for services not provided directly by the facility. Contracts or agreements shall include a statement that contract personnel shall:

(a) perform according to facility policies and procedures;

(b) conform to standards required by laws, rules and regulations;

(c) provide services that meet professional standards and are timely.

(2) Contracts or transfer agreements shall be available for Department review.

(3) The licensee shall maintain transfer agreements for one or both of the following:

(a) admitting privileges for clinical staff at a general hospital within 30 minutes travel distance of the birthing center;

(b) a written transfer agreement with one or more general hospitals located within 30 minutes travel distance of the birthing center.

(4) The general hospital transfer agreement shall include provisions for:

(a) transfer of information needed for proper care and treatment of the individual transferred;

(b) security and accountability of the personal effects of the individual being transferred.

R432-550-12. Quality Assurance.

(1) The administrator shall establish a program to ensure quality in the operation of the birthing center and the services provided.

(2) The quality assurance program shall include a written organizational plan to identify and resolve problems.

(3) The quality of services offered by the facility shall be monitored by a quality assurance committee:

(a) The quality assurance committee shall include at least representatives from facility administration and clinical services and a knowledgeable person who is not an owner or employee of the birthing center.

(b) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

(c) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the governing body and with the administrator and clinical director as necessary to produce desired results.

(4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-13. Emergency and Disaster.

(1) The administrator shall make provisions to maintain a safe environment in the event of an emergency or disaster. An emergency or disaster includes but is not limited to utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101-31-4, Life Safety Code 1991.

(3) The administrator shall review the written emergency procedures at least annually and update them as appropriate.

(4) Personnel shall have ready access to written emergency and disaster plans when on duty.

(5) The administrator shall review the disaster plan with local disaster agencies as appropriate.

(6) The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section 31-4.4 of the Life Safety Code, 1991 edition.

R432-550-14. Patients' Rights.

Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

(1) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

(2) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

(3) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(4) to be informed, prior to or at the time of admission and

during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(5) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

(6) to refuse to participate in experimental research;

(7) to be ensured confidential treatment of personal and medical records and to approve or refuse 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;

(8) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-15. Clinical Staff and Personnel.

(1) A physician applying for privileges at the birthing center must maintain admitting privileges at a general hospital within 30 minutes travel distance of the birthing center.

(2) A certified nurse-midwife applying for privileges must provide evidence of, and maintain, a collaborative relationship with a back-up physician to include at least a written and signed agreement approved by the clinical director. Written agreements a certified nurse-midwife establishes with a back-up physician shall include at least the following:

(a) documentation that the back-up physician agrees to accept consultation calls and referrals from the certified nurse-midwife 24 hours a day;

(b) documentation that the back-up physician has admitting privileges at a general acute hospital within 30 minutes travel distance of the birthing center;

(c) provisions to ensure adequate and timely services by the back-up physician.

(3) Information identifying current clinical staff, back-up physicians and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(4) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.

(5) A physician or certified nurse-midwife shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

(6) A second employee who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(7) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-16. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-17. Nursing Services.

(1) The birthing center shall provide nursing care services to meet the needs of the patients served.

(2) Licensed nursing service personnel shall plan and deliver nursing care as defined in written facility policy and in accordance with Title 58, Chapters 31b and 44a; and R156-31b and R156-44a; and other applicable laws and rules.

(3) The administrator shall employ sufficient licensed and auxiliary nursing staff to meet the total nursing needs of the patients.

R432-550-18. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

(a) furnishings suitable for labor, birth and recovery;

(b) oxygen with flow meters and masks or equivalent;

(c) mechanical suction and bulb suction;

(d) resuscitation equipment to include resuscitation bags, laryngoscopes, endotracheal tubes and oral airways;

(e) firm surfaces suitable for use in resuscitating patients;

(f) emergency medications, intravenous fluids and related supplies and equipment;

(g) fetal monitoring equipment, minimally to include a fetoscope or doptone;

(h) equipment to monitor and maintain the optimum body temperature of the newborn;

(i) a clock indicating hours, minutes and seconds;

(j) sterile suturing equipment and supplies;

(k) adjustable examination light;

(l) infant scale;

(m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies;

(n) a delivery log for recording birth data.

R432-550-19. Pharmacy Service.

(1) The administrator shall provide documentation that facility pharmacy services comply with R156-17a, Board of Pharmacy Rules; Section 58-17a, Pharmacy Practice Act;

Section 58-37, Controlled Substances Act; and with other applicable state and federal laws, rules and regulations.

(2) Licensed personnel shall prescribe order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-20. Anesthesia Services.

(1) The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(a) Protocols for administration of anesthesia by a certified nurse-midwife shall be in accordance with R156-44a-102 and R156-44a-601.

(b) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-21. Laboratory and Radiology Services.

(1) The birthing center shall provide direct or contract laboratory, radiology and associated services according to facility policy and to meet the needs of patients.

(2) Laboratory and radiology reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(3) Laboratory services shall be provided by a CLIA approved laboratory which meets requirements of R432-100-22. In-house laboratory facilities shall meet the requirements for laboratories in the construction portion of this rule.

(4) Radiology services shall comply with applicable sections of R313-16 Radiation Control and R432-100-21.

R432-550-22. Medical Records.

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals.

(a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient 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.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

(a) admission record with demographic information and patient identification data;

(b) history and physical examination which shall be up-to-date upon the patient's admission;

(c) written and signed informed consent;

(d) orders by a clinical staff member;

(e) record of assessments, plan of care and services provided;

(f) record of medications and treatments administered;

(g) laboratory and radiology reports;

(h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;

(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

(j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;

(k) fetal monitoring record;

(l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any;

(m) record of administration of Rh immune globulin;

(n) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

(a) date and hour of birth, birth weight and length, period of gestation, sex and condition of infant on delivery including Apgar scores and resuscitative measures;

(b) mother's name or unique identification;

(c) record of ophthalmic prophylaxis;

(d) identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening was done and the genetic screening, PKU or other metabolic disorders report.

R432-550-23. Housekeeping Services.

(1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.

(2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-24. Laundry Services.

(1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.

(2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair and shall not be threadbare.

(3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-25. Maintenance, Physical Environment, and

Safety.

(1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.

(2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-26. General Maintenance.

(1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.

(2) The facility shall provide a safe, clean and sanitary environment.

(3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.

(4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.

(5) Documentation shall be maintained for Department review.

R432-550-27. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-28. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-29. Limitations of Services.

(1) Birthing center maternal patients shall be limited to women initially determined to be at low maternity risk and evaluated regularly throughout pregnancy to ensure they remain at low risk for a poor pregnancy outcome.

(2) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(3) A clinical staff member shall perform and document a risk assessment for each maternal patient, which shall include evaluating the maternal patient for the criteria in R432-550-29(4) and facility policy.

(4) In order to be given care in a birth center a patient shall exhibit no evidence of the following:

(a) severe anemia or blood dyscrasia;

(b) insulin dependent diabetes mellitus;

(c) symptomatic cardiovascular disease, including active thrombophlebitis;

(d) compromised renal function;

(e) substance abuse;

(f) pregnancy-induced hypertension to include moderate to severe hypertension, preeclampsia and toxemia;

(g) known or suspected active herpes genitalis;

(h) viral infections during pregnancy known to adversely affect fetal well-being;

(i) previous caesarean section, major uterine wall surgery or obstetrical complications likely to recur;

(j) multiple gestation;

(k) pre-term labor (37 weeks or less) or post-term gestation (43 weeks or greater);

(l) prolonged rupture of membranes;

(m) intrauterine growth retardation or macrosomia;

(n) suspected serious congenital anomaly;

(o) fetal presentation other than vertex;

(p) oligohydramnios, polyhydramnios or chorioamnionitis;

(q) abruptio placenta or placenta previa;

(r) fetal distress which will be likely to adversely affect the infant in labor or at birth, including moderate to heavy meconium stained amniotic fluid;

(s) need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols;

(t) a desire for transfer from birthing center care;

(u) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

R432-550-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

February 24, 1998	**26-21-5**
Notice of Continuation December 15, 1997	**26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-600. Abortion Clinic Rule.
R432-600-1. Legal Authority.

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

R432-600-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

R432-600-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensure.

R432-600-4. Licensure.

A license is required to operate an abortion clinic. The licensee and facility shall maintain documentation that they are members in good standing with the National Abortion Federation which is required for licensure.

R432-600-5. Construction.

(1) See R432-4-1 through R432-4-24 General Construction Requirements.

(2) Each facility shall conform to the functional, space, and equipment specifications of U. S. Department of Health and Human Services, Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 edition, including Appendix A, specifically, Chapter 9, Outpatient Facilities, sections 9.1 and 9.2. Modifications or deletion of space and functional requirements may be made with Departmental written approval.

(3) Treatment rooms shall be a minimum of 110 square feet exclusive of vestibules or cabinets.

R432-600-6. Organization.

(1) Each clinic shall be operated by a licensee. If the licensee is other than a single individual, there shall be an organized functioning governing body to assure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility.

(3) Responsibilities shall include at least the following:

(a) Comply with all applicable federal, state and local laws, rules and requirements;

(b) Adopt and institute by-laws, protocols, policies and procedures relative to the operation of the clinic;

(c) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(d) Appoint, in writing, a qualified medical director to be responsible for clinical services;

(e) Establish a quality assurance committee in conjunction with the medical staff;

(f) Secure contracts for services not provided directly by the clinic;

(g) Receive and respond to the annual inspection report by the Department;

(h) Notify the Department in writing the name of a new administrator within five days of a change of administrator.

(i) Compile statistics on the distribution of the informed consent material as required in Section 76-7-313.

R432-600-7. Clinic Protocols, Policies, and Procedures.

Clear, explicit written protocols, criteria, policies and procedures in accordance with Section 76-7-302, shall be established by the licensee with consultation of the medical director and the administrator in the following areas:

(1) Patient eligibility criteria;

(2) Physician competency criteria;

(3) Informed consent;

(4) Abortion procedure protocols to include;

(a) Clinic policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic.

(b) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgement of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)

(5) Pre and post counseling;

(6) Clinic operational functions;

(7) Patient care and patient rights policies;

(8) A quality assurance committee;

(9) Ongoing relevant training program for all clinic personnel;

(10) Emergency and disaster plans;

(11) Fire evacuation plans.

R432-600-8. Administrator.

(1) Each facility shall designate, in writing, an administrator who shall have sufficient freedom from other responsibilities to be on the premises of the clinic a sufficient number of hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) The administrator shall be 21 years of age or older.

(4) The administrator shall be experienced in administration and supervision of personnel, and shall be knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) The administrator's responsibilities shall be included in a written job description.

(6) Responsibilities shall include at least the following:

(a) Develop and implement facility policies and procedures;

(b) Maintain an adequate number of qualified and competent staff to meet the needs of clinic patients;

(c) Develop clear and complete job descriptions for each position;

(d) Implement recommendations made by the quality assurance committee;

(e) Notify the Department promptly in the event of the death of a patient;

(f) Notify appropriate authorities when a serious communicable disease is diagnosed;

(g) File a fetal death certificate as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery;

(h) Review all incident and accident reports and document what action was taken.

R432-600-9. Medical Director.

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have sufficient training and expertise in abortion procedures to enable him to supervise the scope of service offered by the clinic;

(c) Be a diplomate of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the Department that other training and experience will qualify him for admission to an examination by either board; or

(d) Be certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons; or submit evidence to the Department that his training and experience qualifies him for admission to an examination by the College or Board;

(e) Be a member in good standing with the National Abortion Federation.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director shall be responsible for at least the following:

(a) To develop and review facility protocols;

(b) To establish competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) To supervise the performance of the medical staff;

(d) To serve as a member of the clinic's quality assurance committee;

(e) To act as consultant to the director of nursing;

(f) Ensure that a physician's report is filed as required in Section 76-7-313, for each abortion performed.

R432-600-10. Director of Nursing.

(1) Each clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(2) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(3) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.

R432-600-11. Health Surveillance.

(1) 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.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704. Communicable Disease Rules;

(5) 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;

(a) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) 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.

R432-600-12. Personnel.

(1) The Administrator shall employ a sufficient number of professional and support staff who are competent to perform their respective duties, services and functions.

(a) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce.

(b) Copies shall be maintained for Department review that all licenses, registration and certificates are current.

(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.

(2) There shall be planned, documented, in-service training program held regularly for all facility personnel.

(3) The training program shall address all clinic protocols and policies.

(4) All clinic personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

R432-600-13. Contracts.

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility. If the facility contracts for services, there shall be a signed, dated agreement that details all services provided.

(2) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license, if applicable.

R432-600-14. Emergency Transfer Agreements.

(1) The licensee shall maintain a written transfer agreement with one or more full-service JCAHO-accredited hospitals located within an overall travel time of 15 minutes or less from the clinic.

(2) The transfer agreement shall include provisions for:

(a) Hospital admitting privileges for the clinic medical director or the attending physician;

(b) Transfer of information needed for proper care and treatment of individual transferred;

(c) Security and accountability of the personal effects of the individual transferred.

R432-600-15. Quality Assurance.

(1) The administrator, in conjunction with the medical staff, shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The committee shall include a representative from the clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The minutes shall be available for review by the Department.

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

R432-600-16. Emergency and Disaster.

(1) Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, he should make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) This plan shall be in writing and shall be distributed or made available to all facility staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated at least annually by the administrator and the licensee.

(4) The names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems shall be posted.

(5) The facility's emergency plan shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(d) An inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) Assignment of personnel to specific tasks during an emergency;

(f) Names and telephone numbers of on-call physicians and staff at each nurses' station;

(g) Documentation of emergency events.

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall identify evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and shall be posted throughout the facility.

(b) The written fire emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills shall be held quarterly--one drill per shift per quarter. The actual evacuation of patients during a drill is optional.

R432-600-17. Patients' Rights.

(1) The clinic shall provide informed consent material (see Section 76-7-305.5) to any patient or potential patient.

(2) Written policies regarding the rights of patients shall be made available to the patient, public, and the Department upon request.

(3) Each patient admitted to the facility shall have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of these rights and of all facility rules that pertain to the patient;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of any charges for which the patient may be liable;

(c) To refuse to participate in experimental research;

(d) To refuse treatment and to be informed of the medical consequences of such refusal;

(e) To be assured confidential treatment of personal and medical records and to approve or refuse 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;

(f) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-600-18. General Patient Care Policies.

(1) Each patient shall be treated as an individual with dignity and respect.

(2) Each clinic shall develop and implement patient care policies to be reviewed annually by the director of nursing.

(a) Patient care policies shall be developed and revised through patient-care conferences with all professionals involved in patient care.

(b) Admission and discharge policies shall be included in general patient care policies.

(3) The facility shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

(4) Each patient shall be under the care of a physician who is a member of the clinic staff.

R432-600-19. Nursing Services.

(1) Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) All non-medical patient services shall be under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

(4) All nursing personnel shall maintain a current Utah nursing license.

(5) The facility shall provide adequate equipment in good working order to meet the needs of patients.

(a) Disposable and single-use items shall be properly disposed after use.

(b) The type and amount of equipment shall be identified in clinic policy and approved by the medical director.

R432-600-20. Medication and Treatments.

Documentation of medications and treatments shall comply with generally accepted professional practice and clinic policy.

R432-600-21. Pharmacy Service.

(1) There shall be written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) There shall be provision for the supply of necessary drugs and biologicals on a prompt and timely basis.

(3) The clinic shall obtain reference material containing monographs on all drugs used in the facility. The drug monographs shall include generic and brand names, available strengths, dosage forms, indications and side effects, and other pharmacological data.

(4) All medications, solutions, and prescription items shall be kept in a secure controlled storage area, convenient to the nurses station and separate from non-medicine items.

(5) A accessible emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) Medications stored at room temperature shall be maintained within 59 degrees - 80 degrees F (15 degrees to 30 degrees C). Refrigerated medications shall be maintained within 36 degrees - 46 degrees F (2 degrees to 8 degrees C).

(7) Medications and other items that require refrigeration shall be stored securely and segregated from food items.

R432-600-22. Laboratory and Radiology Services.

(1) The facility shall make provisions, as appropriate, for Laboratory and Radiology services.

(2) There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.

(3) Services shall be performed by a qualified licensed provider.

(4) If the facility provides its own laboratory service, these services shall comply with R432-100-22 in the General Hospital Facility Rules.

(5) If the facility provides its own radiology services, these shall comply with R432-100-21.

(6) If laboratory and radiology services are not provided directly, provision shall be made for such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

R432-600-23. Anesthesia Services.

Anesthesia services provided in the clinic shall comply with the General Hospital Rules R432-100-15.

R432-600-24. Medical Records.

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval. There shall be written policies and procedures to accomplish these purposes.

(2) A permanent individual medical record shall be maintained for each patient.

(3) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(4) Records shall be kept for all patients admitted or accepted for treatment and care. Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each patient.

(5) All records of discharged patients shall be completed and filed as soon as possible or within 30 days of discharge.

(6) Each patient's medical record shall include the following:

(a) An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;

(b) Reports of physical examinations, laboratory tests and X-rays prescribed and completed, including ultrasound reports;

(c) Signed and dated physician orders for drugs and treatments;

(d) Signed and dated nurse's notes regarding the care of the patient. The notes shall include vital signs, medications, treatments and other pertinent information;

(e) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) The pathologist's report of human tissue removed during an abortion;

(g) All information indicated in Section 76-7-313.

(7) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority

plus an additional two years. In no case shall the record be retained less than seven years.

(8) All patient records shall be retained within the clinic upon change of ownership.

(9) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(10) Medical record information shall be confidential. There shall be written procedures for the use and removal of medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information which may identify the patient (including photographs) shall require the written consent of the patient.

R432-600-25. Housekeeping Services.

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) The housekeeping service shall meet all the requirements of this section.

(3) Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary.

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

(5) Housekeeping equipment shall be for institutional use and properly maintained.

(6) Cleaning solutions for floors shall be prepared in proper strengths according to the manufacturer's instructions and be checked to insure that the proper germicidal concentrations are maintained.

(7) There shall be sufficient number of noncombustible trash containers. Lids shall be provided where appropriate.

(8) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used as storage places.

R432-600-26. Laundry Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.

(3) Each facility shall develop and implement policies and procedures relevant to operation of the laundry which shall be reviewed and updated annually.

(4) Clean linen shall be stored, handled, and transported in a manner to prevent contamination.

(a) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.

(b) Clean linen shall be covered if stored in alcoves and transported through the facility.

(c) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(d) Linens shall be maintained in good repair.

(e) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of patients.

(5) Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.

(a) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.

(6) Laundry chutes shall be maintained in a clean sanitary state.

R432-600-27. Maintenance Services.

(1) 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 patients, staff, and visitors.

(2) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(3) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.

(4) All buildings, fixtures, equipment and spaces shall be maintained in operable conditions.

(5) A pest control program shall be conducted to ensure the facility is free from vermin and rodents by a licensed pest control contractor or an employee certified in pest control procedures.

(6) Equipment used in the clinic shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(7) Electrical systems including appliances, cords, equipment, call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

(8) Heating and cooling systems shall be inspected annually to guarantee safe operation. Documentation of these inspection reports shall be maintained for Department review.

(9) There shall be regular inspections, to clean or replace all filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.

R432-600-28. Emergency Electric Service.

(1) The clinic shall make provision for emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.

(2) The method utilized for emergency electrical power is subject to Departmental review and approval.

(3) There shall be provision for emergency exit lighting according to NFPA 101.

(4) Flashlights shall be available for emergency use by staff.

(5) All emergency electrical power systems shall be

maintained in operating condition and tested as follows:

(a) Emergency generators shall be tested every 14-days, and run under load for 20 minutes every month.

(b) Transfer switches and battery operated equipment shall be tested every 14-days.

(6) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review.

R432-600-29. Storage and Disposal of Solid Wastes.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-600-30. Oxygen.

If oxygen is utilized:

(1) Provision shall be made for safe handling and storage of oxygen according to the National Fire Protection Association 101 manual.

(2) Facility personnel shall not transfer gas from one cylinder to another.

(3) Piped oxygen system shall be tested in accordance with NFPA 56F and 56K.

(4) A written report shall be filed with the Utah Department of Health as follows:

(a) Upon completion of initial installation;

(b) Whenever changes are made to a system; and

(c) Whenever the integrity of the system has been breached.

R432-600-31. Lighting.

(1) Sodium and mercury vapor lights may not be used inside the facility, but may be utilized as a source of exterior lighting.

(2) At least 30 foot-candles of light shall illuminate reading, patient care (bed level) and working areas in patient treatment areas and not less than 20 foot-candles of light shall be provided in the rest of the room.

(3) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least 20 foot-candles of light at floor level.

(4) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(5) Other areas shall be provided with the following minimum foot-candles of light at working surfaces:

(a) Operating rooms 50 Foot-candles

(b) Medication preparation areas 50 foot-candles

(c) Charting areas 50 foot-candles

(d) Reading rooms 50 foot-candles

(e) Laundry areas 20 foot-candles

(f) Bath and shower rooms 20 foot-candles

R432-600-32. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The facility shall endeavor to maintain hot water delivered to patient care areas at temperature between 105 degrees and 115 degree F.

(4) There shall be grab bars at each toilet, bathtub, and shower used by patients.

(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.

R432-600-33. Smoking Policy.

The smoking policy shall comply with the "Utah Clean Air Act", Title 26, Chapter 38, and Section 31-4.4 of the Life Safety Code, 1991.

R432-600-33. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-650. End Stage Renal Disease Facility Rules.
R432-650-1. Legal Authority.

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

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease (ESRD) facilities in order to provide safe and effective services.

R432-650-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule.

(2) "Interdisciplinary professional team" means a team of qualified professionals who are responsible for creating the Patient Long Term Care Program and Patient Care Plan. The qualifications are described in 42CFR 405.2137(a) and (b), 1997, which is adopted and incorporated by reference.

R432-650-4. Licensure.

License Required. See R432-2 and R432-3.

R432-650-5. Patient Care Services.

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U., 1997, which is adopted and incorporated by reference.

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

(a) The Communicable Disease Rule, R386-702;

(b) Tuberculosis Control Rule, R388-804; and

(c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B, and for Tuberculosis by the Mantoux method within the first two weeks of beginning employment.

R432-650-7. Required Staffing.

(1) Each patient shall be under the continuing supervision of a physician. A physician shall be available in medical emergency situations through a current telephone call roster readily accessible to the nursing staff.

(2) Physician assistants and advanced practice registered nurses may provide services in ESRD facilities in association with the supervising or consulting nephrologist, and in accordance with state law.

(3) Each ESRD facility shall provide sufficient qualified clinical staff to meet patient care needs. A minimum of two clinical staff personnel, one a registered nurse for supervision of patient clinical care, shall be on duty whenever patients are receiving dialysis services.

(a) A registered nurse may not supervise the clinical care of more than 10 patients if arranged in an open setting, or 12 patients if arranged in three pods of four patients.

(b) A registered nurse may not supervise patient clinical care, or provide unsupervised patient clinical care until the nurse has completed training and demonstrated competency as determined by facility policy.

(c) Dialysis technicians and licensed practical nurses may not be assigned patient clinical care for more than four patients at a time.

(d) Dialysis technicians and licensed practical nurses must complete training and demonstrate competency according to facility policy prior to providing patient care.

(4) Each ESRD facility must orient all employees to specific job requirements and facility policies. The facility shall document initial and on-going employee orientation and training. Patient clinical care staff orientation and training shall include at least the following topics:

(a) patient rights and responsibilities;
(b) kidney disease processes;
(c) hemodialysis process;
(d) hemodialysis complications;
(e) dialysis access and management;
(f) psycho-social implications of dialysis on patient care;
(g) nutritional requirements;
(h) universal precautions;
(i) use of the medical emergency kit;
(j) use and function of facility equipment;
(k) emergency procedures;
(l) AAMI water treatment standards; and
(m) dialyzer re-use procedures, if offered.

(5) A registered nurse may delegate the following patient care activities to licensed practical nurses or dialysis technicians:

(a) cannulation of peripheral vascular access;

(b) administration of intradermal lidocaine, intravenous heparin and intravenous normal saline; and

(c) initiation, monitoring and discontinuation of the dialysis process.

(6) Each ESRD facility must ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

R432-650-8. Patient Care Plan.

(1) Each patient must have a care plan that is developed and implemented by the interdisciplinary team with the patient's consent within one month of beginning treatment.

(2) Each patient who receives treatment for more than 90 days must have a long-term care program that is developed and implemented by the interdisciplinary team with the patient's participation.

R432-650-9. Emergency Equipment.

(1) Each ESRD facility must have available on-site a medical emergency kit containing medications, equipment and supplies. The medical director shall determine and approve the

contents of the kit.

(2) Each ESRD facility must have available on-site an emergency supply of oxygen.

R432-650-10. Drug Storage.

(1) Each ESRD facility shall provide for controlled storage and supervised preparation and use of medications. Medications and food items may be stored in the same refrigerator if safely separated.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(c) Medications must be kept in the original container and may not be transferred to other containers.

(2) If a medication station is provided, the facility shall provide a work counter and hand washing facilities.

R432-650-11. Medical Records.

(1) Each ESRD facility must store and file medical records to allow for easy staff access.

(a) Medical records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(2) The licensee must retain medical records for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-12. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as published in "Hemodialysis Systems," second edition, which is adopted and incorporated by reference.

(2) Each ESRD facility that utilizes in-center water systems must have bacteriologic quality analysis performed and documented at least monthly by a laboratory that adheres to AAMI standards.

(3) For home systems, the ESRD facility must conduct bacteriological quality analysis at least monthly using an approved home testing methodology as identified in the patient care plan.

(a) An alternate schedule of testing may be approved by the attending physician.

(b) The alternate schedule shall be specified in the patient care plan.

(4) If reverse osmosis or deionization devices are used for in-center or home systems, the ESRD facility must have chemical quality analysis performed and documented at least once every 12 months by a laboratory that adheres to AAMI standards.

(5) The ESRD facility must maintain and make available for Department review all water quality test results. In the case of home dialysis, test results shall become part of the patient record maintained by the ESRD facility.

R432-650-13. Continuous Quality Improvement Program.

(1) Each ESRD facility must implement a well-defined continuous quality improvement program to monitor and evaluate the quality of patient care services. The program shall be consistent with the scope of services offered and adhere to accepted standards of care associated with the renal dialysis community.

(2) The program shall include a review of patient care records, facility policies and practices to:

(a) identify and assess problems and concerns, or opportunities for improvement of patient care;

(b) implement actions to reduce or eliminate identified problems and concerns, and improve patient care; and

(c) document corrective actions and results.

(3) The administrator shall establish a committee to implement the continuous quality improvement program. The committee shall include the facility administrator or designee, the medical director, the nursing supervisor, and other individuals as identified in the program.

(4) The committee must meet at least quarterly and keep minutes and related records, which shall be available for Department review.

(5) The continuous quality improvement program may include more than one facility in scope only when the facilities are organized under the same governing body and the program addresses problems, concerns and issues at the individual ESRD facility level.

R432-650-14. Physical Environment.

The following standards apply for new construction and remodeling of ESRD facilities:

(1) The treatment area may be an open area and shall be separate from the administrative and waiting area. Individual treatment areas must contain at least 80 square feet. Each treatment area shall have the capacity for privacy for each patient.

(2) The dialysis treatment area must include a nurses station designed to provide visual observation of the patient treatment area.

(3) There shall be at least one hand washing facility serving no more than eight stations. All hand washing stations shall be convenient to the nurses station and treatment areas.

(4) If an infection isolation room is required to control airborne infection, the isolation room shall have a separate hand washing facility and comply with R386-702, Communicable Disease Rule, and other applicable standards determined in the pre-construction plan review process.

(5) If the ESRD facility provides home dialysis training, a private treatment room of at least 120 square feet is required for patients who are being trained to use dialysis equipment at home. The room shall contain a counter, hand washing facilities, and a separate drain for fluid disposal.

(6) Each ESRD facility must provide a clean work area that is separate from soiled work areas. If the area is used for preparing patient care items, it must contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. If the area is used only for storage and holding

as part of a system for distribution of clean and sterile materials, the work counter and hand washing facilities may be omitted.

(7) Each ESRD facility must provide a soiled work area that contains a hand washing sink, work counter, storage cabinets, waste receptacles and a soiled linen receptacle.

(8) If dialyzers are reused, a reprocessing room is required that is sized and equipped to perform the functions required and to include one-way flow of materials from soiled to clean with provisions for refrigerated temporary storage of dialyzers, a decontamination and cleaning area, sinks processors, computer processors and label printers, a packaging area, and dialyzer storage cabinets.

(9) If a nourishment station for dialysis service is provided, the nourishment station must contain a sink, a work counter, a refrigerator, storage cabinets, and equipment for serving nourishments as required.

(10) Each ESRD facility must have an environmental services closet immediately available to the treatment area. The closet must contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(11) If an equipment maintenance service area is provided, the service area must contain hand washing facilities, a work counter and a storage cabinet.

(12) Each ESRD facility must provide a supply area or supply carts.

(13) Storage space out of the direct line of traffic shall be available for wheelchairs and stretchers, if stretchers are provided.

(14) Each ESRD facility must provide a clean linen storage area commensurate with the needs of the facility. The storage area may be within the clean work area, a separate closet, or distribution system. If a closed cart distribution system is used for clean linen, the cart must be stored out of the path of normal traffic.

(15) Each ESRD facility using central batch delivery system, must provide, either on premises or through written arrangements, individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(16) Each ESRD facility must house water treatment equipment in an enclosed room at a sufficient distance from the patient treatment area to prevent machinery and operational noise from disturbing patients.

(17) Each ESRD facility must provide a patient toilet with hand washing facilities immediately adjacent to the treatment area.

(18) Each ESRD facility must provide lockers, toilets and hand washing facilities for staff.

(19) Each ESRD facility must provide a secure storage area for patients' belongings.

(20) A waiting area with seating accommodations shall be available or accessible to the dialysis unit. A toilet room with hand washing facilities, a drinking fountain, and a telephone for public use shall be available or accessible for use by persons using the waiting room.

(21) Office and clinical work space shall be available for administrative services.

R432-650-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities

January 11, 1999	**26-21-5**
Notice of Continuation December 15, 1997	**26-21-16**

R432. Health, Health Systems Improvement, Licensing.
R432-700. Home Health Agency Rule.
R432-700-1. Authority.

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

R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.

All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to to the requirements of R432-700-30.

R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.

(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:

(a) Provision of skilled services authorized by a physician;

(b) Nursing services assessed, provided, or supervised by registered nurses;

(c) Other related health services approved by a licensed practitioner;

R432-700-7. Licensure Required.

(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.

(2) See R432-2.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) Notify the licensing agency the name of a new administrator in writing no later than five days after hire.

(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(6) Make provision for resources and equipment to provide a safe working environment for personnel.

(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704, Communicable Disease Rules.

(3) Skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) Skin testing must be conducted on each health care worker who has direct patient contact annually and after known exposure to a patient with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) 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.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;

(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;

(d) The family situation changes and affects the delivery of services;

(e) The patient or family is uncooperative in efforts to attain treatment objectives;

(f) The patient moves from the geographic area served by the agency;

(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;

(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;

(i) The agency discontinues a particular service or terminates all services;

(j) The agency can no longer provide quality care in the place for residence;

(k) The patient or family requests agency services to be discontinued;

(l) The patient dies;

(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or

(n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.

(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how patients' rights information is distributed.

(3) The agency shall insure that each patient receiving care has the following rights:

(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;

(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;

(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) To receive proper identification from the individual providing home health services;

(k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.

(1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.

(2) Physician's orders may include:

(a) Diet and nutritional requirements;

(b) Medications;

(c) Frequency and type of service;

(d) Treatments;

(e) Medical equipment and supplies;

(f) Prognosis.

R432-700-18. Patient Records.

(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.

(2) Records shall be maintained in an organized format.

(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.

(6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.

(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(8) Each patient's record shall contain at least the following information:

(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) A written plan of care;

(c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;

(d) Reasons for referral to home health agency;

(e) Statement of the suitability of the patient's place of residence for the provision of health care services;

(f) Documentation of telephone consultation or case conferences with other individuals providing services;

(j) Signed and dated clinical notes for each patient contact or home visit including services provided

(h) A written Termination of Services summary which describes:

(i) The care or services provided;

(ii) The course of care and services;

(iii) The reason for discharge;

(iv) The status of the patient at time of discharge;

(v) The name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services the following items shall be included in the patient record in addition to R432-700-18(8):

(a) Diagnosis;

(b) Pertinent medical and surgical history;

(c) A list of medications and treatments;

(d) Allergies or reactions to drugs or other substances;

(e) Clinical notes to include a description of the patient condition and significant changes such as:

(i) Objective signs of illness, disorders, body malfunction;

(ii) Subjective information from the patient and family;

(iii) General physical condition;

(iv) General emotional condition;

(v) Positive or negative physical and emotional responses to treatments and services;

(vi) General behavior; and

(vii) General appearance.

(f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.

(1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.

(2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.

(3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.

(4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.

(5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.

(6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.

(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.

(2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.

(3) The agency shall demonstrate concern for cost of care by evaluation of the following:

(a) Relevance of health care services;

(b) Appropriateness of treatment frequency;

(c) Use of less expensive, but still effective, resources whenever possible;

(d) Use of ancillary services consistent with patient needs.

(4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.

(a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.

(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.

(5) The methodology for evaluation shall include but is not limited to:

(a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample

of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;

(b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;

(c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.

(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.

(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.

(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.

(4) Nursing staff shall observe, report, and record written clinical notes.

(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.

(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.

(7) Licensed nurses shall have the following responsibilities:

(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;

(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;

(c) Inform the physician and other personnel of changes in the patient's condition and needs;

(d) Write clinical notes in the individual patient record for each visit or contact;

(e) Teach self-care techniques to the patient or family, or both;

(f) Develop plans of care;

(g) Participate in in-service programs.

(8) The director of nursing services shall be responsible for and shall be accountable for the following functions:

(a) Designate a registered nurse to act as director of nursing services during his absence;

(b) Assume responsibility for the quality of nursing services provided by the agency;

(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;

(d) Establish work schedules for nursing personnel according to patient needs;

(e) Assist in development of job descriptions for nursing personnel;

(f) Complete performance evaluations for nursing personnel according to agency policy;

(g) Direct in-service programs for all nursing personnel.

(9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:

(a) Make the initial nursing evaluation visit;

(b) Re-evaluate nursing needs based on the patient's status and condition;

(c) Initiate the plan of care and make necessary revisions;

(d) Provide services which require specialized nursing skill;

(e) Initiate appropriate preventive and rehabilitative nursing procedures;

(f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree ot supervision needed;

(g) Assist in coordinating all services provided;

(h) Prepare termination of services statements;

(i) Supervise and consult with licensed practical nurses as necessary;

(j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;

(k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;

(l) Make supervisory visits with or without the certified nursing aide's presence as follows:

(i) Initial assessment;

(ii) Every two weeks to patients who receive skilled services;

(iii) Every three months to patients who require long-term maintenance services;

(iv) Any time there is a question of change in the patient's condition.

(10) The licensed practical nurse shall have the following responsibilities:

(a) Work under the supervision of a registered nurse;

(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;

(c) Assist the registered nurse in performing specialized procedures;

(d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

The certified nursing aide shall have the following responsibilities:

(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(2) Perform normal household services essential to health care at home;

(3) Make occupied or unoccupied beds;

(4) The certified nursing aide may supervise the patient's self-administration of medication by:

(a) Reminding the patient it is time to take medications;

(b) Opening the bottle cap;

(c) Reading the medication label to patients;

(d) Checking the self-administered dosage against the label of the container;

(e) Reassuring the patient that he is taking the correct dose;

(f) Observing the patient taking his medication.

(5) Perform simple diagnostic activities;

(6) Perform activities of daily living as written in plan of care;

(7) Give nail care as described in the plan of care;

(8) Observe and record food and fluid intake when ordered;

(9) Change dry dressings according to written instructions from the supervisor;

(10) Administer emergency first aid;

(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;

(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;

(13) Write clinical notes in individual patient records.

(14) Certified Nursing Aides shall be at least 18 years old.

(15) Certified Nursing Aides shall have received a certificate of completion for the employment position:

(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;

(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur within six months of the date of hire.

R432-700-23. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and have the following responsibilities:

(a) Receive written instructions from the supervisor;

(b) Perform only the tasks and duties outlined in the service agreement;

(c) Have knowledge of agency policy and procedures;

(d) Be trained in first aid;

(e) Be oriented and trained in all aspects of care to be provided to clients;

(f) Be able to demonstrate compentency in all areas of training for personal care; and

(g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;

(2) Personal Care Aides may assist clients with the following activities:

(a) Self-administration of medications by:

(i) reminding the client to take medications, and

(ii) opening containers for the client;

(b) Housekeeping;

(c) Personal grooming and dressing;

(d) Eating and meal preparation;

(e) Oral hygiene and denture care;

(f) Toileting and toilet hygiene;

(g) Arranging for medical and dental care including transportation to and from the appointment;

(h) taking and recording oral temperatures;

(i) Administering emergency first aid;

(j) Providing or arranging for social interaction;

(k) Providing transportation.

(3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.

(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.

(2) A plan of care shall be developed and signed by a licensed health care professional.

(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.

(4) Modifications or additions to the initial plan of care shall be made as necessary.

(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.

(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

(h) Diet or nutritional requirements;

(i) Necessary safety measures;

(j) Instructions, if any, to patient and/or family;

(k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(6) Physician orders may be transmitted by facsimile

machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

(a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;

(c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

(1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW)or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

R432-700-30. Home Health - Personal Care Service Agency.

(1) A Home Health - Personal Care Service Agency provides personal care services exclusively.

(2) The agency shall develop written policies and procedures that address the delivery of personal care services.

(3) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(a) The administrator shall have at least one year or managerial or supervisory experience.

(b) The administrator shall designate in writing a qualified person who shall act in his absence and the designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being;

(c) The administrator or designee shall be available during the agency's hours of operation.

(4) Each employee shall be licensed, certified or registered as required in R432-700-10.

(5) Each employee shall complete a health screening as described in R432-700-11.

(6) The agency may accept clients for service if the client's needs do not exceed the level of personal care to be provided by the Home Health- Personal Care Service Agency.

(7) A functional assessment shall be completed for each client, prior to admission to the agency and annually thereafter, or at earlier intervals when a significant change in condition occurs.

(a) The functional assessment shall be performed by a licensed health care professional. The assessment shall include a statement from the licensed health care professional that the personal care services can be provided safely to the client.

(b) If the functional assessment reveals that the client's needs exceed the personal care services, the health care professional shall make a referral to a home health agency or other alternative service.

(8) The agency shall obtain a signed and dated service agreement from the client and his responsible party, if available. The service agreement shall include the following:

(a) A description of services to be performed by the Personal Care Aide;

(b) Charges for the services;

(c) A statement that a 30-day notice shall be given prior to a change in charges.

(9) The Home Health-Personal Care Service Agency shall maintain and secure client records for each client receiving services.

(a) Client records shall be retained by the agency for three years following the last date of service;

(b) The client record shall contain the following:

(i) Client's name, date of birth and address;

(ii) Client service agreement;

(iii) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;

(iv) Documentation of date and reason for the termination of services, which may include the following:

(A) Payment for services cannot be met;

(B) The safety of the client or provider cannot be assured;

(C) The needs of the client exceed the level of care provided by the agency;

(D) The client requests termination of services; or

(E) The agency discontinues services.

(v) Documentation of the Personal Care Aide visit.

(10) Personal Care Aides shall meet the qualification of R432-700-23 and be supervised by an individual with the following qualifications:

(a) A Certified Nursing Aide with at least two years experience in personal or home care; or

(b) A licensed health care professional.

(11) The supervisor shall evaluate and document the quality of the personal care services provided in the client's place of residence every six months.

R432-700-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health facilities
November 6, 2000 26-21-5
Notice of Continuation December 15, 1997 26-21-2.1

R432. Health, Health Systems Improvement, Licensing.
R432-750. Hospice Rule.
R432-750-1. Legal Authority.

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

R432-750-2. Purpose.

A hospice program provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

(1) A hospice program recognizes dying as a normal process resulting from disease or injury.

(2) A hospice service neither hastens nor postpones death.

(3) A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs, patients and families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(4) The hospice program is a health care agency or facility which offers palliative and supportive services providing physical, psychosocial, spiritual and bereavement care for dying persons and their families.

(5) A hospice provides services through an interdisciplinary team of professionals and volunteers.

(6) Hospice services are available in both the home and an inpatient setting.

R432-750-3. Time for Compliance.

All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1998.

R432-750-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Appropriate" means especially suitable or compatible; fitting.

(b) "Bereavement" means the period of time, usually occurring within the first year after the loss, during which a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

(c) "Care" means to perceive and respond to the needs of another.

(d) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.

(e) "Family" means a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.

(f) "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

(g) "Hospice" means a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals and their families.

(h) "Hospice Administrator" means a person who is appointed in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

(i) "Hospice Care" means the care given to the terminally ill and their families which occurs in a home or in a health facility and which includes medical, palliative, psychosocial, spiritual, bereavement and supportive care and treatment.

(j) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or designated hospice licensed hospice unit in an existing health care facility.

(k) "Interdisciplinary Team" means a team composed of physician (attending and medical director), nurse, social worker, pastoral care provider, volunteer, patient and family, and any other professionals as indicated.

(l) "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms and pain management rather than treatment to cure.

(m) "Palliative Care" means the care given to the terminally ill, focusing on relief of distressing symptoms

(n) "Pastoral Care Provider" means an individual who has received a degree from an accredited theological school, or an individual who by ordination or by ecclesiastical endorsement from the individual's denomination has been approved to function in a pastoral capacity. A Pastoral Care Provider may also be an individual who has received certification in Clinical Pastoral Education which meets the requirements for the College of Chaplains. The individual shall have experience in pastoral duties and be capable of providing for hospice patients' and families' spiritual needs.

(o) "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

(p) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, certified nursing aide, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.

(q) "Spiritual" means patient's and families' beliefs and practices as they relate to the meaning of their life, death, and their connection to humanity which may or may not be of a religious nature.

(r) "Terminal Illness" means a state of disease characterized by a progressive deterioration with impairment of function which without aggressive intervention, survival is anticipated to be six months or less.

(s) "Terminal Care" means the care provided to an individual during the final stage of their illness.

(t) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.

(u) "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice; one who contributes time and talent to the hospice program without economic remuneration.

R432-750-5. Licensure.

Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

R432-750-6. Eligibility.

These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, which provides, directly or by contract hospice services to the terminally ill.

R432-750-7. Governing Body and Administration.

(1) The hospice agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body is responsible to:

(a) comply with all federal regulations, state rules, and local laws;

(b) adopt policies and procedures which describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) develop and implement bylaws which shall include at least:

(i) a statement of purpose,

(ii) a statement of qualifications for membership and methods to select members of the governing board,

(iii) a provision for the establishment, selection, and term of office for committee members and officers,

(iv) a description of functions and duties of the governing body officers and committees,

(v) a statement of the authority and responsibility delegated to the hospice administrator, and

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(e) meet at least annually, or more frequently as stated in the bylaws;

(f) appoint by name and in writing a qualified hospice administrator who is responsible for the agency's overall functions;

(g) notify the licensing agency in writing 30 days prior to any proposed change in the hospice administrator, identifying the name of the new hospice administrator and the effective date of the change;

(h) review the written annual evaluation report from the hospice administrator and document recommendations as necessary;

(i) make provision for resources and equipment to provide a safe working environment for personnel;

(j) establish a system of financial management and accountability.

(4) The hospice administrator is responsible for the overall management of the agency.

(a) The hospice administrator must designate in writing the name and title of a qualified person who shall act as hospice administrator in the temporary absence of the hospice administrator. This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(b) The hospice administrator or designee shall be available during the agency's hours of operation.

(c) The hospice administrator is responsible to:

(i) complete, submit, file, and make available all records, reports, and documentation required by the Department;

(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing body;

(iii) implement agency policies and procedures;

(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;

(vi) appoint by name and in writing a registered nurse to be the director of nursing services;

(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;

(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(ix) designate by name and in writing a person responsible for maintaining a clinical record system on all patients;

(x) maintain current written designations or letters of appointment in the agency;

(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(xii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(xiii) secure contracts for services not directly provided by the hospice;

(xiv) implement a program of budgeting and accounting;

(xv) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source; and

(xvi) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.

R432-750-8. Personnel.

The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) The agency shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of

licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training; and

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee must provide within 45 days of hire proof of registration, certification, or licensure as required by the Utah Department of Commerce.

(3) The agency shall establish and implement a policy and procedure for health screening of all agency personnel.

(a) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(b) 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) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with R386-702 Communicable Disease Rule.

(d) Employee skin testing by the Mantoux Method 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.

(4) The hospice must document that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(a) Orientation shall include:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies; and

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation pursuant to 62A-3-302.

(b) The hospice shall provide and document in-service training and continuing education for staff at least annually.

(i) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The hospice shall train all personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assure that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of all levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) The hospice program shall provide access to individual and/or group support for interdisciplinary team members to assist with stress and/or grief management related to providing hospice care.

R432-750-9. Contracts.

(1) The hospice administrator shall secure a legally binding written contract for the provision of arranged patient services.

(2) The contract or agreement shall be available for review by the Department.

(3) The contract shall include:

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) provision for financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner in which services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, or regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) a provision to terminate the contract; and

(h) a photocopy of the professional license of contract personnel, if applicable.

R432-750-10. Acceptance and Termination.

(1) The agency shall develop written acceptance and termination policies and make these policies available to the public upon request.

(2) The agency shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) A patient will be accepted for treatment if there is

reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The agency shall base the acceptance determination on the following:

(a) The patient, family or responsible person agrees that hospice care is appropriate and completes a signed informed consent document requesting hospice services. If no primary care person is available, the agency shall complete an evaluation to determine the patient's eligibility for service.

(b) The patient's attending physician must order hospice care.

(c) The hospice agency determines that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) The agency may terminate services to a patient if any of the following circumstances occur:

(a) The patient is determined to no longer be terminal.

(b) The family situation changes which affects the delivery of services.

(c) The patient or family is uncooperative in efforts to attain treatment objectives.

(d) The patient moves from the geographic area served by the agency.

(e) The physician fails to renew orders or the patient changes his physician and the agency cannot obtain orders for continuation of services from the new physician.

(f) The agency can no longer provide quality care in the existing environment due to safety of staff, patient, or family.

(g) The patient or family requests that agency services be discontinued.

(5) Upon transfer from a home program to an in-patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-11. Patients' Rights.

(1) The agency shall establish and make available to the patient written patients' rights.

(a) Written patients' rights shall be made available to the, responsible party, next of kin, sponsoring agency, representative payee, and the public upon request.

(b) Agency policy may determine how patients' rights information is distributed.

(2) The agency shall insure that each patient receiving care has the following rights:

(a) to receive information on patient's rights and responsibilities;

(b) to receive information on services for which the patient or a third party payor may be responsible and to receive information on all changes in charges;

(c) to be informed of personal health conditions, unless medically contraindicated and documented in the clinical record, and to be afforded the opportunity to participate in the planning of the hospice services, including referral to health care institutions or other agencies and to refuse to participate in experimental research;

(d) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such if refused;

(e) to be assured confidential treatment of personal and medical records and to approve or refuse the release of records to any individual outside the agency except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) to be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) to receive information about the hospice services required in order to assist in the course of treatment;

(h) to be assured the personnel who provide care are qualified through education and experience to carry out the services for which they are responsible;

(i) to receive proper identification by the individual providing hospice services;

(j) to permit the patient the right to discontinue hospice care at any time he or she chooses; and

(k) to receive information about advanced directives.

R432-750-12. Patient Records.

(1) The administrator shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) Records shall be organized in a uniform medical record format.

(b) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) The hospice shall maintain an accurate, up-to-date record for every patient receiving service.

(d) Each hospice health care provider who has patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) All entries must be dated and authenticated with the signature and title of the person making the entry.

(f) The hospice must document services provided and outcomes of these services in the individual patient record.

(2) Physician's orders shall be incorporated into the plan of care and renewed at least every 90 days.

(a) The orders shall include the physician signature and date.

(b) Orders faxed from the physician are acceptable provided that the original order is available upon request.

(3) Each patient's record shall contain at least the following information:

(a) demographic information including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) diagnosis;

(c) pertinent medical and surgical history if available;

(d) a written and signed informed consent to receive hospice services;

(e) orders by the attending physician for hospice services;

(f) medications and treatments as applicable;

(g) a written plan of care; and

(h) a signed, dated patient assessment which includes the following:

(i) a description of the patient's functional limitations;

(ii) a physical assessment noting chronic or acute pain and other physical symptoms and their management;

(iii) a psychosocial assessment of the patient and family;

(iv) a spiritual assessment; and

(v) a written summary report of hospice services provided.

(4) The hospice must send a copy of the summary required in subsection 12(3)(g)(v) to the patient's attending physician at least every 90 days. The summary shall become part of the patient's and family record as applicable.

(5) The person who is assigned to supervise or coordinate care for a patient must complete a discharge summary when services to the patient are terminated. The summary shall include:

(a) the reason for discharge; and

(b) the name of the facility or agency if the patient has been referred or transferred.

(6) The hospice shall safeguard clinical record information against loss, destruction, and unauthorized use.

(a) Written procedures shall govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/client information and photographing of recorded information.

(c) When a patient is transferred to another facility or agency, a copy of the record or abstract must be sent to that service agency.

(7) The agency shall provide an accessible area for filing and safe storage of medical records.

(a) Patient records shall be retained for at least seven years after the last date of patient care.

(b) Upon change of ownership, all patient records shall be transferred to new owners.

R432-750-13. Quality Assurance.

(1) The governing body shall evaluate the quality, appropriateness, and scope of services provided by the agency at least annually to determine if the agency has met the agency objectives.

(2) An interdisciplinary quality assurance committee shall evaluate patient services at least quarterly and maintain a written report of findings. Recommendations from each meeting shall be submitted to the hospice administrator and shall be maintained in the agency for review by the department.

(a) The administrator shall appoint the members of the quality assurance committee for a given term of membership.

(b) The quality assurance committee shall include a minimum of three individuals who represent three different health care services.

R432-750-14. Hospice Services.

(1) A hospice unit of care includes the patient and the patient's family. The patient and family (or other primary care person) participate in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Hospice care includes responding to the scheduled and unscheduled needs of the patient and family 24 hours per day. Written policies and procedures shall include:

(a) a procedure for accepting referrals in accordance with the provisions of R432-750-10;

(b) a procedure for completing an initial assessment and developing the interdisciplinary care plan;

(c) providing for and documenting that the interdisciplinary team meets regularly to evaluate care and includes inpatient and in-home care staff;

(d) provision for the care plan to be available to team members for in-home and inpatient services;

(e) appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) provision for a clearly defined integrated administrative structure between in-home care and inpatient services; and

(g) coordination of care plan between in-home hospice and inpatient hospice care.

(3) Hospice care shall be provided by the interdisciplinary team.

(a) The interdisciplinary team may include ancillary staff when appropriate.

(b) The interdisciplinary team shall meet at least twice a month to develop and maintain an appropriate plan of care.

(4) A care plan for each patient must be signed by the attending physician and include the following:

(a) the name of patient;

(b) all pertinent diagnoses;

(c) objectives, interventions, and goals of treatment, based upon needs identified in a comprehensive patient assessment;

(d) services to be provided, at what intervals and by whom; and

(e) the date plan was initiated and dates of subsequent reviews.

(5) No medication or treatment requiring an order may be given by hospice nurses except on the order of a person lawfully authorized to give such an order.

(a) Initial orders and subsequent changes in orders for the administration of medications shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the program.

(b) Telephone orders must be received by licensed personnel and recorded immediately in the patient's medical record. Telephone orders must be countersigned by the initiator within 15 days of the date of issue.

(c) Orders for therapy services shall include the specific procedures to be used and the frequency and duration.

(d) The attending physician shall review, sign and date orders at least every 90 days.

(e) Only those hospice employees licensed to do so may administer medications to patients.

(f) Medications and treatments that are administered by hospice employees, must be administered as prescribed and recorded in the patients record.

R432-750-15. Physician Services.

(1) Each patient admitted for hospice services shall be under the care of a licensed physician.

(2) The physician shall provide the following:

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders; and

(e) pertinent orders regarding the patient's terminal

condition.

(3) The administrator shall appoint in writing a licensed physician to be the medical director. The Medical Director must be knowledgeable about the psychosocial and medical aspects of hospice care, on the basis of training, experience and interest. The medical director shall:

(a) act as a medical resource to the interdisciplinary team;

(b) coordinate services with each attending physician to ensure continuity in the services provided in the event the attending physician is unable to retain responsibility for patient care; and

(c) act as liaison with physicians in the community.

R432-750-16. Nursing Services.

(1) A registered nurse shall provide or direct nursing services.

(2) Registered nursing personnel shall perform the following tasks:

(a) make the initial nursing evaluation visit;

(b) re-evaluate the patient's nursing needs as required;

(c) initiate the plan of care and necessary revisions;

(d) provide directly or by contract skilled nursing care;

(e) assign, supervise and teach other nursing personnel and primary care person;

(f) coordinate all services provided with members of the interdisciplinary team;

(g) inform the physician and other personnel of changes in the patient's condition and needs;

(h) prepare clinical progress notes; and

(i) participate in in-service training programs.

R432-750-17. Medical Social Work Services.

(1) The agency shall provide social work services by a qualified social worker who has received a degree from an accredited school of Social Work.

(2) Social work services shall be provided by a social worker licensed under the Mental Health Professional Practice Act (Title 58, Chapter 60).

(3) The social worker shall participate in in-service training to meet the care needs of the patient and family.

R432-750-18. Professional Counseling Services.

(1) The agency shall provide counseling services to patients either directly or by contract. These services may include dietary and other counseling services deemed appropriate to meet the patients' and families' needs.

(2) Individuals who provide counseling services, whether employed or contracted by the agency, must be licensed, certified, registered, or qualified as to education, training, or experience according to law.

R432-750-19. Pastoral Care Services.

(1) The hospice shall provide pastoral services through a qualified staff person who has a working relationship with local clergy or spiritual counselors.

(2) Pastoral services shall include the following:

(a) spiritual counseling consistent with patient and family belief systems;

(b) communication with and support of clergy or spiritual counselors in the community as appropriate; and

(c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-20. Volunteer Services.

Hospice volunteers provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1) Volunteers must receive a minimum of 12 hours of documented orientation and training which shall include the following:

(a) the hospice services, goals, and philosophy of care;

(b) the physiological aspects of terminal disease;

(c) family dynamics, coping mechanisms and psychosocial and spiritual issues surrounding the terminal disease, death and bereavement;

(d) communication skills;

(e) concepts of death and dying;

(f) care and comfort measures;

(g) confidentiality;

(h) patient's and family's rights;

(i) procedures to be followed in an emergency;

(j) procedures to follow at time of patient death;

(k) infection control and safety;

(l) stress management; and

(m) the volunteer's role and documentation requirements.

(3) The hospice shall maintain records of hours of services and activities provided by volunteers.

(4) The agency shall have on file, a copy of certification, registration, or license of any volunteer providing professional services.

R432-750-21. Bereavement Services.

(1) Bereavement services shall address the family needs following the death of the patient. Services are available, as needed, to survivors for at least one year.

(2) Bereavement services shall be supervised by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, counseling, and bereavement services.

(3) All volunteers and staff who deliver bereavement services shall receive bereavement training.

(4) Bereavement services shall include the following:

(a) survivor contact, as needed and documented, following a patient's death;

(b) an interchange of information between the team members regarding bereavement activities; and

(c) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-22. Other Services.

(1) Other services may include but are not limited to:

(a) physical therapy;

(b) occupational therapy;

(c) speech therapy; and

(d) certified nursing aide.

(2) Services provided directly or through contract shall be ordered by a physician and documented in the clinical record.

R432-750-23. Freestanding Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, freestanding inpatient hospice facilities shall meet the Construction and Physical Environment requirements of R432-4, R432-5 and R432-12, depending on facility size and type of patient admitted.

R432-750-24. Hospice Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, inpatient hospice facilities shall meet the requirements of R432-750-25 through R432-750-40.

R432-750-25. Inpatient Staffing Requirements.

(1) The inpatient hospice must provide competent hospice trained nursing staff 24 hours per day, every day of the week to meet the needs of the patient in accordance with the patient's plan of care. Nursing services must provide treatments, medications, and diet as prescribed.

(2) A hospice-trained registered nurse must be on duty 24 hours per day to provide direct patient care and supervision of all nursing services.

R432-750-26. Inpatient Hospice Infection Control.

(1) The hospice shall develop and implement an infection control program to protect patients, family and personnel from hospice or community associated infections.

(2) The hospice administrator and medical director shall develop written policies and procedures governing the infection control program.

(3) All employees shall wear clean garments or protective clothing at all times, and practice good personal hygiene and cleanliness.

(4) The hospice shall develop and implement a system to investigate, report, evaluate, and maintain records of infections among patients and personnel.

(5) The hospice shall comply with OSHA Blood Borne Pathogen Standards, 29 CFR 1910.1030, July 1, 1998, which is adopted and incorporated by reference.

R432-750-27. Pharmaceutical Services.

(1) The hospice shall establish and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(2) A licensed pharmacist shall supervise pharmaceutical services. The pharmacist's duties shall include, but not be limited to the following:

(a) advise the hospice and hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal, and record keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;

(b) inspect all drug storage areas at least monthly; and

(c) conduct patient drug regiment reviews at least monthly or more often if necessary, with recommendations to physicians and hospice staff.

(3) The hospice shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(4) The pharmaceutical service must ensure that drugs and biologicals are labeled based on currently accepted professional principles, and include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(5) The hospice must provide secure storage for medications. Medications that require refrigeration must be maintained between 36 and 46 degrees F.

(6) The hospice must provide separately locked compartments for storage of controlled drugs as listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as well as other drugs subject to abuse. Only authorized personnel, in accordance with State and Federal laws, shall have access to the locked medication compartments.

(7) Controlled drugs no longer needed by the patient shall be disposed of by the pharmacist and a registered nurse. The hospice must maintain written documentation of the disposal.

(8) An inpatient hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit monthly, or more often as necessary.

R432-750-28. Inpatient Hospice Patient's Rights.

(1) In addition to R432-750-11, the hospice shall honor each patient's rights as follows:

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

(b) the right to be free of mental and physical abuse;

(c) the right to be free of chemical and physical restraints for the purpose of discipline or staff convenience;

(d) the right to have family members remain with the patient through the night;

(e) the right to receive visitors at any hour, including small children;

(f) the right for the family to have privacy after a patient's death;

(g) the right to keep personal possessions and clothing as space permits;

(h) the right to privacy during visits with family, friends, clergy, social workers, and advocacy representatives;

(i) the right to send and receive mail unopened; and have access to telephones to make and receive confidential calls;

(j) the right to have family or responsible person informed by the hospice of significant changes in the patient's condition or needs;

(k) the right to participate in religious and social activities of the patient's choice;

(l) the right to manage and control personal cash resources;

(m) the right to receive palliative treatment rather than treatment aimed at intervention for the purpose of cure or prolongation of life;

(n) the right to refuse nutrition, fluids, medications and treatments; and

(o) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night; except that the hospice may lock doors

at night for the protection of patients.

(2) The hospice must post patient rights in a public area of the facility.

(3) Restraints ordered to treat a medical condition must comply with the requirements of R432-150-14.

R432-750-29. Report of Death.

(1) The hospice shall have a written plan to follow at the time of a of patient's death. The plan shall include:

(a) recording the time of death;

(b) documentation of death;

(c) notification of attending physician responsible for signing death certificate;

(d) notification of next of kin or legal guardian;

(e) authorization and release of the body to the funeral home;

(2) The hospice must notify the Department of any death resulting from injury, accident, or other possible unnatural cause.

R432-750-30. First Aid.

(1) The hospice shall ensure that at least one staff person is on duty at all times who is certified in cardiopulmonary resuscitation and has training in basic first aid, the Heimlich maneuver and emergency procedures.

(2) First aid training refers to any basic first aid course approved by the American Red Cross, Utah Emergency Medical Training Council, or any course approved by the department.

(3) Each hospice, except those attached to a medical unit, shall have a first aid kit available at a designated location in the facility.

(4) Each hospice shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

R432-750-31. Safeguards for Patients' Monies and Valuables.

(1) The hospice must safeguard patients' cash resources, personal property, and valuables which have been entrusted to the licensee or hospice staff.

(2) A hospice is not required to handle patient's cash resources or valuables. However, if the hospice accepts a patient's cash resources or valuables, then the hospice must safeguard the patient's cash resources in accordance with the following:

(a) No licensee or hospice staff member may use patients' monies or valuables as his own or mingle them with his own. Patients' monies and valuables shall be separated, and 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 licensee must maintain accurate records of patients' monies and valuables entrusted to the licensee.

(c) Records of patients' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, and an account for each patient and supporting receipts filed in chronological order.

(d) Each account shall be kept current with columns for debits, credits, and balance.

(e) Records of patients' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished for funds received.

(f) All money entrusted with the facility in a patient account in excess of $150 must be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each inpatient hospice must maintain a separate account for patient funds specific to that inpatient hospice and shall not commingle with patient funds from another inpatient hospice.

(4) Upon discharge, a patient's money and valuables, which have been entrusted to the licensee, shall be returned to the patient that day. Money and valuables kept in an interest-bearing account shall be available to the patient within three working days.

(5) Within 30 days following the death of a patient, except in a medical examiner case, the patient's money and valuables entrusted to the licensee shall be surrendered to the responsible persons, or to the administrator of the estate.

R432-750-32. Emergency and Disaster.

(1) The hospice is responsible for the safety and well-being of patients in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop plans coordinated with the state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all patients and include arrangements for staff response, or provisions of additional staff to ensure the safety of any patient with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing patients, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and patients to assure prompt and efficient implementation.

(c) The licensee and the administrator shall review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The hospices's emergency and disaster response plans shall address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport patients and staff to a safe place within the hospice or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the patients' needs after an emergency or

disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the hospice during an emergency;

(j) delivery of essential care and services to hospice occupants when personnel are reduced by an emergency; and

(k) 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 patients in the hospice. The person in charge shall take immediate action in the best interests of the patients.

(iii) The hospice shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the hospice that may exacerbate the medical condition of patients.

(4) Personnel and patients shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The hospice shall:

(a) annually review the procedures with existing staff and patients;

(b) hold simulated disaster drills semi-annually; and

(c) document all drills, including date, participants, problems encountered, and the ability of each patient to evacuate.

(5) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the hospice, relieve subordinates, and take charge.

(6) Each inpatient hospice shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, a first aid kit, and a radio.

(7) The hospice shall post the following information in appropriate locations throughout the facility:

(a) the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

(8) The hospice must post emergency telephone numbers at each nursing station.

(9) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

R432-750-33. Food Service.

(1) The hospice may provide dietary services directly, or through a written agreement with a food service provider.

(2) The hospice food service shall comply with the R392-100, Utah Department of Health Food Service Sanitation Rule.

(3) The hospice must maintain for Department review all inspection reports by the local health department.

(4) If the hospice accepts patients requiring therapeutic or special diets, the hospice shall have an approved dietary manual for reference when preparing meals.

(5) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(6) The hospice must employ or contract with a certified dietician to provide documented quarterly consultation if patients requiring therapeutic diets are admitted.

(7) The hospice must ensure that sufficient food service personnel are on duty to meet the needs of patients.

(8) While performing food service duties, the cook and other kitchen staff shall not perform concurrent duties outside the food service area.

(9) All persons who prepare or serve food shall have a current Food Handler's Permit.

R432-750-34. Nutrition and Menu Planning.

(1) The hospice shall provide at least three meals or their equivalent daily.

(2) Meals shall be served with no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is available in the evening.

(3) The hospice must have between meal snacks of nourishing quality available on a 24 hour basis.

(4) A different menu shall be planned for and available for each day of the week.

(5) The hospice shall ensure that patients' favorite foods are included in their diets whenever possible.

(6) The hospice shall maintain at least a one-week supply of non-perishable food and a three-day supply of perishable food.

(7) All food shall be of good quality, palatable, and attractively served.

R432-750-35. Pets in the Facility.

(1) A hospice may permit patients to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinances.

(2) Pets must be clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets shall be kept in appropriate enclosures.

(5) Pets that are not confined shall be under leash control, or voice control.

(6) Pets that are kept at the facility shall have documented current vaccinations.

(7) Upon approval of the administrator, family members may bring patients' pets to visit. Visiting pets must have current vaccinations.

(8) Hospices with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling of droppings and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in food preparation, storage or central dining areas, or in any area where their presence would create a significant health or safety risk to others.

R432-750-36. Laundry Services.

(1) The hospice must provide laundry services to meet the needs of the patients.

(2) If the hospice contracts for laundry services, the hospice must obtain a signed, dated agreement from the contracted laundry service that details all services provided.

The contracted laundry service must meet the requirements of R432-750-36(3)(c) through (f).

(3) Each hospice that provides in-house laundry services must meet the following requirements:

(a) The hospice must maintain a supply of clean linen to meet the needs of the patients.

(b) Clean bed linens shall be changed as often as necessary, but no less than twice each week.

(c) Soiled linen and clothing shall be stored separate from clean linen and not allowed to accumulate in the facility.

(d) Laundry equipment shall be in good repair.

(e) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(f) Personnel shall handle, store, process, and transport linens in a manner to minimize contamination by air-borne particles and to prevent the spread of infection.

R432-750-37. Maintenance Services.

(1) The hospice shall provide maintenance services to ensure that equipment, buildings, furnishings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) The hospice shall conduct a pest control program through a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition with regard to ice, snow, and other hazards.

R432-750-38. Waste Storage and Disposal.

The hospice must provide facilities and equipment for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using techniques acceptable to the Department of Environmental Quality and the local health authority.

R432-750-39. Water Supply.

(1) Hot water provided to patient tubs, showers, whirlpools, and hand washing facilities shall be regulated for safe use within a temperature range of 105 - 120 degrees F.

(2) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the above temperatures.

R432-750-40. Housekeeping Services.

(1) The hospice must provide housekeeping services to maintain a clean, sanitary, and healthful environment.

(2) If the hospice contracts for housekeeping services with an outside entity, the hospice must obtain a signed and dated agreement that details the services provided.

(3) The hospice must provide safe, secure storage of cleaners and chemicals. In areas with potential access by children or confused disoriented patients, cleaners and chemicals must be locked in a secure area to prevent unauthorized access.

(4) Personnel engaged in housekeeping or laundry services may not be concurrently engaged in food service or patient care.

(5) The hospice must establish and implement policies and procedures to govern the transition of housekeeping personnel to food service or direct patient care duties.

R432-750-41. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R432. Health, Health Systems Improvement, Licensing.
R432-950. Mammography Quality Assurance.
R432-950-1. Authority.

This rule is adopted pursuant to Section 26-21a-203.

R432-950-2. Compliance.

Facilities shall be in full compliance with R432-950 and 42 U.S.C. 263b, the Mammography Quality Standards Act of 1992.

R432-950-3. Definitions.

(1) "Diagnostic mammography" means performing a mammogram on a woman suspected of having breast cancer.

(2) "Facility" means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis, including any or all of the following: operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and the viewing conditions for that interpretation.

(3) "Image quality" means the overall clarity and detail of an x-ray including spatial resolution or resolving power, sharpness, and contrast.

(4) "Mammogram" means a radiographic image of the breast.

(5) "Mammogram unit" means an x-ray system designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression, and low dose exposure that can produce reproducible images of high quality.

(6) "Mammography" means radiography of the breast to diagnose breast cancer.

(7) "Phantom" means an artificial test object simulating the average composition of, and various structures within, the breast.

(8) "Screening mammography" means a standard readable two-view per breast low dose radiographic examination to detect unsuspected breast cancer using specifically designed equipment dedicated for mammography.

(9) "Quality assurance" means a program designed to achieve the desired degree or grade of care including evaluation and educational components to identify and correct problems in interpreting and obtaining mammogram.

(10) "Quality control" means the process of testing and maintaining the highest possible standards of equipment performance and acquisition of radiographic images.

R432-950-4. Facility Quality Assurance.

(1) The facility shall conduct a quality assurance program to assure the operation and the services provided are in accordance with R432-950.

(2) The facility shall correct identified deficiencies to produce desired results.

(3) The facility shall evaluate the corrections required for a systems change to update the quality assurance plan.

R432-950-5. Compliance with State and Local Rules.

(1) A supplier of mammography services shall comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and mammography services.

(2) The facility shall maintain documentation showing that it complies with all applicable state and local laws and rules pertaining to radiological and mammography services. This includes the following:

(a) Certification of the facility;

(b) Licensure or certification of the personnel;

(c) Documentation that the facility has been approved by the American College of Radiology (ACR).

R432-950-6. Facility Oversight.

(1) The facility is responsible for the overall quality of the mammography conducted.

(2) The facility shall have available, either on staff or through arrangement, sufficient qualified staff to meet patients' needs relating to mammography. Sufficient staff includes the following:

(a) A designated physician supervisor who meets the requirements for qualified physicians specified by the Utah Department of Commerce;

(b) A medical physicist who is certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or who meets the requirements specified by the Department of Environmental Quality;

(c) One or more radiologic technologists who meet the requirements specified by the Utah Department of Commerce pursuant to Section 26-21a-203.

R432-950-7. Physician, Physicist and Radiologic Technologist Standards.

(1) A physician interpreting mammograms or supervising mammography, or both, shall provide documentation to the Department upon request showing he meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act. A qualified physician shall interpret the results of all mammograms. Diagnostic mammography shall be done under the direct on-site supervision of a qualified physician.

(2) A radiologic technologist shall meet the following requirements and the facility shall provide documentation to the Department upon request showing the radiologic technologist:

(a) Meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act;

(b) Obtains on-the-job training in mammography under the supervision of a qualified physician, or the supervising radiologic technologist, or both;

(c) Is competent in breast positioning and compression as determined from critiques by a qualified physician of mammogram films taken by the radiologic technologist;

(d) Is knowledgeable in facility policies concerning technical factors, radiation safety, radiation protection, and quality control as evaluated by the radiologic technologist's supervisor;

(e) Receives continuous supervision and feedback on image quality from the interpreting or supervising physician.

(3) A medical physicist must:

(a) be certified in an acceptable specialty by one of the bodies approved by the FDA to certify medical physicists;

(b) be licensed or approved by a State to conduct evaluations of mammography equipment as required by State

law; or

(c) for those medical physicists associated with facilities that apply for accreditation before October 27, 1997, who meet training and experience requirements of Mammography Quality Standards Act and its implementing regulations.

R432-950-8. Personnel Requirements.

(1) The facility shall document that new staff orientation and ongoing in-service training is based on current written facility policies and procedures.

(2) Personnel shall have access to the facility's written policies and procedures when on duty.

(3) The facility shall implement a standardized orientation program for each employment position including the time for completing training.

(4) A written in-service training program shall identify the topics and frequency of training including an annual review of facility policies and procedures.

(5) The facility shall maintain personnel records documenting that each employee is qualified and competent to perform respective duties and responsibilities by means of appropriate licensure or certification, experience, orientation, ongoing in-service training, and continuing education.

(6) The facility shall retain personnel records for terminated employees for a minimum of four years following the final date of termination.

R432-950-9. Equipment Standards.

(1) Mammogram units shall be designed specifically for mammography and shall have a compression device and the capability for placement of a grid.

(2) The facility shall maintain current written policies and procedures for operating equipment.

(3) Prior to initiating operation of a mammogram unit it shall be registered with the Utah Department of Environmental Quality.

R432-950-10. Safety Standards.

(1) The facility shall maintain documentation that the mammogram unit is safe and that proper radiation safety practices are being followed.

(2) The facility shall maintain documentation that employees have been trained on safety standards for radiation.

(3) The facility shall maintain procedure manuals and logs for equipment quality control.

(4) The facility shall maintain documentation that the quality control program complies with ACR quality control manuals for mammography or the equivalent.

(a) Equivalent programs shall include a quality control program for equipment, mammogram unit performance, and film processors, approved by the Utah Department of Environmental Quality.

(b) Equivalent programs shall contain stated objectives achieved by procedures comparable to objectives and procedures in the American College of Radiology Quality Control Manuals for Mammography.

(5) Accreditation by the American College of Radiology Mammography Program documents compliance with mammogram unit quality control requirements in R432-950-10(1).

R432-950-11. Technical Specifications for Mammography.

(1) The facility shall have available a phantom for use in the facility's ongoing quality control program.

(2) The facility shall evaluate image quality at least monthly using a phantom that produces measurements satisfactory to the supervising physician.

(3) The facility's evaluation of clinical images shall include the following:

(a) Positioning;

(b) Compression;

(c) Exposure level;

(d) Resolution;

(e) Contrast;

(f) Noise;

(g) Exam Identification;

(h) Artifacts.

R432-950-12. Physician Supervisor Responsibility.

(1) A physician supervisor is responsible for general oversight of the quality control program of the facility. Oversight responsibilities include:

(a) Annual review of the policy and procedure manual;

(b) Verification that the equipment and facility personnel meet applicable federal, state and local licensure and registration requirements;

(c) Verification that equipment is performing properly;

(d) Verification that safe operating procedures are used to protect facility personnel and patients;

(e) Verification that all other requirements of R432-950 are being met.

(2) The physician shall document annually that he provides oversight for the quality control of the mammography service.

R432-950-13. Mammography Records.

(1) A medical record shall be maintained for each patient on whom screening or diagnostic mammography is performed.

(a) Provision shall be made for the filing, safe storage and accessibility of medical records.

(b) Records shall be protected against loss, defacement, tampering, fires, and floods.

(c) Records shall be protected against access by unauthorized individuals.

(d) All records shall be readily available upon the request of:

(i) The attending physician,

(ii) Authorized representatives of the Department for determining compliance with licensure rules;

(iii) Any other person authorized by written consent.

(e) The facility shall establish a system to assure that the patient's mammogram is accessible for clinical follow-up when requested.

(i) A copy of the mammogram and other appropriate information shall be sent to the requesting party responsible for subsequent medical care of the patient no later that 14 working days from the request for information.

(ii) Medical information may be released only upon the

written consent of the patient of her legal representative.

(2) The facility shall attempt to obtain a prior mammogram for each patient if the prior mammogram is necessary for the physician to properly interpret the current exam.

(3) The interpreting physician shall prepare and sign a written report of his interpretation of the results of the screening mammogram.

(a) The written report shall include a description of detected abnormalities and recommendations for subsequent follow-up studies.

(b) The interpreting physician shall render the report as soon as reasonably possible.

(c) The interpreting physician or his designee shall document and communicate the results of the report to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(d) The interpreting physician or his designee shall notify self-referred patients, that is, patients who have no referring physician, of the results of the screening study in writing and in lay language.

(4) The interpreting physician or his designee shall document and communicate the results of all diagnostic reports in the high probability category with suspicion of breast cancer to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(5) The physician shall document and communicate in person in lay language, by certified mail, or in such a manner that receipt of the diagnostic report is assured to all self-referred patients within the high probability category with a suspicion of breast cancer. The report shall indicate whether the patient needs to consult with a physician.

(a) The interpreting physician or his designee shall attempt to make a follow-up contact with the patient to determine whether she has consulted a physician for follow-up care.

(b) The interpreting physician or his designee shall document in the patient's medical record attempts to communicate the results to the patient.

(6) The facility shall retain the original and subsequent mammograms for a period of at least five years from the date of the procedure.

R432-950-14. Education.

(1) A patient has the right to be treated with dignity and afforded privacy during the examination.

(2) The facility shall establish an education system to ensure that the patient understands:

(a) The purpose of the mammogram and how it is used to screen for breast cancer;

(b) The process required to obtain the mammogram;

(c) The importance of the screening mammography to her ongoing health.

R432-950-15. Collecting and Reporting Data.

(1) The facility shall establish a system for collecting and periodic reporting of mammography examinations and clinical follow-up as provided below:

(a) Clinical follow-up data shall include the follow-up on the disposition of positive mammographic findings, and the correlation of the surgical biopsy results with mammogram reports.

(b) The facility shall maintain records correlating the positive mammographic findings to biopsies done and the number of cancers detected.

(c) The facility shall report the results of the outcomes annually to the Department or its designated agent, on forms furnished by the Department. The report shall include as a minimum:

(i) The number of individuals receiving screening mammograms;

(ii) Total number of patients recommended for biopsy based on a screening mammogram;

(iii) Total number of patients diagnosed with breast cancer based on a screening mammogram;

(iv) The number and names of individuals with positive mammographic findings lost to follow-up.

(2) The Department or its designated agent shall provide each reporting facility, on a schedule determined by the Department, summary statistical reports which permit each facility to compare its results to statewide and other comparative statistics.

R432-950-16. State Certification.

(1) No facility, person or governmental unit acting severally or jointly with any other person, may establish, conduct or maintain a mammography unit without first obtaining a state certificate from the Department.

(2) An applicant for state certification shall file a Request for Agency Action/Certification Application with the Utah Department of Health on forms furnished by the Department.

(3) Each facility shall comply with all zoning, building and licensing laws, rules and ordinances and codes of the city and county in which the facility is located. The applicant shall submit the following to the Department:

(a) Verification of participation and quality control by the American College of Radiology for monitoring mammography services in the facility;

(b) Verification of licensure or certification of required personnel;

(c) Fees established by the Utah State Legislature pursuant to Section 63-38-3.

(4) The Department shall render a decision on the initial certification within 60 days of receipt of a completed application packet or within 6 months of date that the first component of an application packet was received.

(a) Upon verification of compliance with state certification requirements, the Department shall issue a provisional certificate.

(b) The Department shall issue a notice of agency decision under the procedures for informal adjudicative proceedings denying a state certification if the applicant is not in compliance with the applicable laws or rules. The notice shall state the reasons for denial.

(5) Certificate Contents and Provisions. The state certificate shall include the name of the mammography facility, owner, supervising physician, address, issue and expiration dates of the state certificate and the certificate number.

(b) The state certificate may be issued only to the owner and for the premises described in the application and shall not be assignable or transferable.

(c) Each state certificate is the property of the Department and shall be returned within five days if the certification is suspended, revoked, or if the operation of the facility is discontinued.

(d) The state certificate shall be prominently displayed where it can be easily viewed by the public.

(6) Certification periods shall be for 12 months, and expire at midnight 12 months from the date of issuance.

(a) A request for renewal and applicable fees shall be filed with the Department 15 days before the state certificate expires.

(b) Failure to make a timely renewal shall result in assessment of late fees as established by the Utah State Legislature pursuant to Section 26-21a-203.

(7) The owner shall submit a Request for Agency Action/Application to amend or modify state certification status at least 30-days before any of the following proposed or anticipated changes occur:

(a) Change in the name of the facility;

(b) Change in the supervising physician;

(c) Change in the owner of the facility.

(8) The owner who wants to cease operation shall complete the following:

(a) Notify the patients within 30 days before the effective date of closure.

(b) Make adequate provision for the safekeeping of records and notify the department where those records will be stored.

(c) Return the state certificate to the Department within five days after the facility ceases operation.

(9) The Department may issue a provisional state certificate to a facility as an initial certification and may issue a provisional state certification to a facility that does not fully comply with the requirements for a standard certification but has made acceptable progress towards meeting the requirements.

(a) In granting a provisional state certification, the Department must be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(b) A provisional state certificate is nonrenewable and shall be issued for no more than 6 months.

R432-950-17. Inspections.

Upon presentation of proper identification, authorized representatives of the Department shall be allowed to enter a facility at any reasonable time without a warrant and be permitted to review records including medical records, when it is determined by the Department to be necessary to ascertain compliance with state law and rules promulgated under Section 26-21a-205.

(1) Each facility may be inspected by the Department or its designee to determine compliance with minimum standards and the applicable rules.

(2) Upon receipt of the survey results of the ACR, the facility shall submit copies of the certificate and the survey report and recommendations.

(3) The accreditation documents are open to the public.

(4) The Department may conduct periodic validation inspections of facilities accredited by the ACR for the purpose of determining compliance with state requirements.

R432-950-18. Enforcement and Appeal Process.

Whenever the Department has reason to believe that the facility is in violation of Section 26-21a-203 or any of the rules adopted pursuant to Title 26, Chapter 21, the Department shall issue a written Statement of Findings/Plan of Correction to the certified facility.

KEY: health facilities, mammography
October 19, 1995 26-21a-203
Notice of Continuation December 15, 1997

R590. Insurance, Administration.
R590-144. Commercial Aviation Insurance Exemption From Rate and Form Filing.
R590-144-1. Authority.

This Rule is promulgated by the Insurance commissioner pursuant to:

(a) Section 31A-2-201, Utah Code, which provides general authority to adopt rules for the implementation of the Utah Insurance Code;

(b) Section 31A-19a-103, U.C., which authorizes the commissioner to exempt any market segment from provisions of Chapter 19 (Rate Regulation); and

(c) Section 31A-21-101(5), U.C. which authorizes the commissioner to exempt any class of insurance contract or class of insurer from provisions of Chapter 21 (Insurance Contracts in General).

R590-144-2. Purpose.

The purpose of this Rule is to exempt commercial aviation insurance, as defined in this Rule, from the rate filing requirements of Chapter 19 and the form filing requirements of Chapter 21 of the Utah Insurance Code.

Because of the unique nature of commercial aviation risks, aviation insurance premiums rely on individual risk analysis, underwriting judgment and the negotiation of a sophisticated business transaction between the insurer and an informed insured. Similarly, because of their unique nature, commercial aviation insurance risks have individually tailored manuscript-type policies.

As the commercial aviation market segment is highly specialized, competitive and global in nature, the commissioner has determined that exemption from the rate and form filing requirements of the Utah Insurance Code will not harm Utah insureds, creditors, or the public and is not necessary to the regulation of these insurance products.

R590-144-3. Scope.

This Rule applies to all insurers licensed to write commercial aviation insurance as it is defined in this Rule. This Rule also applies to all rate service organizations.

R590-144-4. Definitions.

For the purpose of this Rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, U.C., Section 31A-19a-102, U.C., and in addition thereto, the following:

(1) "Aviation insurance" means:

(a) All kinds and classes of property insurance on aircraft and all kinds of property and interests therein in respect to, appertaining to or in connection with any and all risks or perils of aerial navigation, transit or transportation.

(b) All kinds and classes of casualty insurance in connection with the construction, repair, maintenance, operation or use of aircraft, and all kinds and classes of casualty insurance in connection with the maintenance, operation or use of airports, including public liability and property damage.

(2) "Commercial aviation insurance" means any class of aviation insurance except insurance of aircraft used for private business and pleasure.

(3) "Private business and pleasure" means predominant use of aircraft for pleasure or personal transportation purposes. The incidental use of aircraft in furtherance of an occupational or business interest is permissible.

R590-144-5. Rule.

(1) Insurers and rate service organizations are exempt from the rate filing requirements of Section 31A-19a-203, Utah Code for commercial aviation insurance. This Rule does not exempt such insurers from the rate standards of 31A-19a-201.

(2) Insurers and rate service organizations are exempt from the form filing requirements of Section 31A-21-201, Utah Code for commercial aviation insurance. This Rule does not permit such insurers to issue contracts that do not conform to the general provisions of Chapter 21.

(3) All insurers must maintain fully documented underwriting files which must be made available to the commissioner upon request. The underwriting file must show that rates are not excessive, inadequate or unfairly discriminatory. The file must also show that contracts are not inequitable, unfairly discriminatory, misleading, deceptive, obscure, encourage misrepresentation, or are otherwise in violation of Utah law.

R590-144-6. Severability.

If any provision or clause of this Rule or the application of it to any person is for any reason held to be invalid, the remainder of the Rule and the application of any provisions to other persons or circumstances shall not be affected.

KEY: insurance

1991	**31A-2-201**
Notice of Continuation March 30, 2001	**31A-19a-103**
	31A-21-101

R612. Labor Commission, Industrial Accidents.
R612-1. Workers' Compensation Rules - Procedures.
R612-1-1. Definitions.

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 101.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's adopted Resource-Based Relative Value Scale and the Medical Fee Guidelines. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Discontinuance of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify an employee of the discontinuance of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation stops for any reason.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Protection of Rights - Form 002" - Used by an injured employee for the sole purpose of protecting his/her rights even though a dispute does not exist. Copies are forwarded to all parties concerned. NOTE: THIS FORM DOES NOT NEED TO BE FILED WHEN ANY OTHER APPLICATION HAS BEEN FILED.

J. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

K. "Occupational Disease Claim of Employee - Form 026" - This form is used by an employee claiming benefits under the Utah Occupational Disease Act.

L. "Occupational Disease Claim of Dependent - Form 027" - This form is used by the dependent(s) of a deceased employee who died as a result of an occupational disease. All provisions of Section G above apply equally to this form.

M. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

N. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

O. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

P. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

Q. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

R. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

S. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Adjudication for approval.

T. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

U. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

V. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

W. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

X. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

Y. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount

or present value table based on a 365 day year. For those instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;

2. Injury or occupational disease did not occur within the scope of employment;

3. Medical information does not support the claim;

4. Claim was not filed within the statute of limitations;

5. Claimant is not an employee of the employer he/she is making a claim against;

6. Claimant has failed to cooperate in the investigation of the claim;

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;

8. Tested positive for drugs or alcohol; or

9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in

dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Form 123 - Physician's Initial Report;
4. Doctor's report of impairment rating;
5. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

a. Is the claimant engaged in a substantial gainful activity?

b. Does the claimant have a medically severe impairment?

c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1,1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a

preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step– Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

(i) the requesting party has a substantial possibility of prevailing on the merits;

(ii) the requesting party will suffer irreparable injury unless a stay is granted; and

(iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step–Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation

that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

R612-1-11. Burial Expenses.

Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to $4,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

KEY: workers' compensation, time, administrative procedure, filing deadlines
March 20, 2001 **34A-2-101 et seq.**
Notice of Continuation November 24, 1997 **34A-3-101 et seq.**
34A-1-104 et seq.
63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-1. Definitions.

A. All definitions in Rule R612-1 apply to this section.

B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.

C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, physicians and chiropractors, shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or impatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the

treatment of an industrially injured employee.

2. Adopts and by this reference incorporates the non facility total unit value of the National Health Care Financing Administration's (HCFA) "Resource-Based Relative Value Scale" (RBRVS), 2001 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 2001 edition, coding guidelines. The CPT-4 coding guidelines are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for an industrial injury or occupational disease, effective January 1, 2001:

Anesthesiology $37.00 (1 unit per 15 minutes of anesthesia);

Medicine $40.00;

Pathology and Laboratory 150% of Utah's published Medicare carrier;

Radiology $53.00;

Restorative Medicine $40.00, with Utah code 97001 at a 0.8 relative value unit and Utah code 97002 at a 0.5 of relative value unit.

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of January 1, 2001. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their industrial injuries or occupational diseases.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of industrial injured/ill patients.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating

physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;

2. The 15% restocking fee shall then be added to the amount determined in sub part 1;

3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

Where a worker sustains an accident in the course of his employment resulting in the loss of or injury to teeth, making dental work necessary, the injured worker shall consult a dental surgeon and receive such first aid as may be necessary to preserve, if possible, the normal function of the injured teeth. The dental surgeon shall then file with the insurance carrier a report setting forth the nature of the injury together with an estimate of the cost of restoration. The dental surgeon shall not proceed with the restoration until authority has been granted by the insurance carrier, provided, however, that if an employer maintains a medical staff or designates a company doctor, the employee shall first report to that medical staff or medical officer and be guided by directions then given. If the carrier refuses payment at the level estimated by the dental surgeon, the employee may choose to pay the difference and seek adjudication by Application for Hearing. A dental surgeon may choose to settle for the payment allowed, or the carrier shall direct the employee to a dental surgeon who will provide his services at the payment level specified by the carrier.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of

employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $5 per day for breakfast, $6 per day for lunch, $10 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. When any medical practitioner provides copies of medical records to the parties of an industrial case, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search,

2. Copies at $0.50 per page including copies of microfilm payable after the records have been prepared, and

3. Actual costs of postage payable after the records have been prepared. Actual costs of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

B. Those persons or entities who are entitled to copies of medical records involving an industrial case are:

1. The injured employee or his/her dependents,

2. The employer of the injured worker,

3. The employer's workers' compensation insurance carrier,

4. The Uninsured Employers' Fund,

5. The Employers' Reinsurance Fund,

6. The Commission, and

7. Any attorney representing any of the above in an industrial injury or occupational disease claim.

C. No other person or entity is entitled to medical records unless ordered by a Court or provided with a notarized release executed by the injured worker.

D. The Commission will operate in the release of its records to the parties/entities as specified above unless the information is classified as confidential under the Government Records Access and Management Act (GRAMA).

E. No fee shall be charged when the RBRVS requires specific documentation for a procedure or when physicians and surgeons are required to report by statute or rule.

F. An injured worker may obtain one of each of the following records related to the industrial injury or occupational disease, at no cost, when the injured worker or his/her dependents have a signed form by the division to substantiate his/her industrial injury/illness claim:

1. History and physical,

2. Operative reports of surgeries,

3. Discharge summary, and

4. Emergency room records,

5. Radiological reports,

6. Specialized testing results,

7. Physician SOAP notes, progress notes or specialized reports.

(a) Alternatively, a summary of the patient's record may be made available to the claimant at the discretion of the physician.

8. And such other records as may be requested by the Commission in order to make a determination of liability.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted

documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination o the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for

review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R568-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R568-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

KEY: workers' compensation, fees, medical practitioner
March 20, 2001 34A-2-101 et seq.
Notice of Continuation June 15, 1998 34A-3-101 et seq.
34A-1-104

R616. Labor Commission, Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 1996 ed., with 1997 Addenda issued December 31, 1996, 1998 Addenda issued February 19, 1998, 1999 Addenda issued June 30, 1999 and 2000 Addenda issued November 30, 2000. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation. The latest effective version of A17.1 is the 1996 edition with the 1997 addenda, 1998 addenda, 1999 addenda and 2000 addenda.

B. ASME A17.3 - 1996 Safety Code for Existing Elevators and Escalators with 2000 addenda issued February 29, 2000. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 1997 Uniform Building Code Chapters 11 and 30.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-1999 Safety Standard For Platform Lifts And Stairway Chairlifts, issued July 26, 1999.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector from the National Association of Elevator Safety Authorities.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the Uniform Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-5.A. may request a safety inspection by Division of Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the

applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location near the elevator for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Since the incorporated safety standard (ASME A17.1) does not specify the minimum headroom clearance requirements for the installation of an inclined wheelchair lift, the following requirements must be met for inclined wheelchair lifts installed in Utah.

B. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

C. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A17.1 Rule 2001.7e shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in Rule 102.2(c)(3) of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-11. Hoistway Vents.

A. With regard to hoistway vents, the Division will assure that elevators meet Rule 100.4 of ASME A17.1 and the minimum area of the vent required by the Uniform Building Code. Requirements for the operation of the vent are defined by the local jurisdiction's fire marshall or building inspector.

R616-3-12. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-13. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-14. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63-38-3.2 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-15. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-16. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-3-17. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-18. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(b).

R616-3-19. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Subsection 63-46b-4(3).

KEY: elevators*, certification, safety
March 20, 2001 34A-1-101 et seq.
Notice of Continuation February 5, 1997

R651. Natural Resources, Parks and Recreation.
R651-205. Zoned Waters.
R651-205-1. Obeying Zoned Waters.

The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.

Vessels and all other water activities are prohibited within 1500 feet of the dam. No water skiing in Wallsberg Bay.

R651-205-3. Green River.

The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.

The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.

The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.

The use of motors is prohibited.

R651-205-7. Palisade Lake.

The use of motors is prohibited.

R651-205-8. Ivins Reservoir.

The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.

The use of motors is prohibited.

R651-205-10. Ken's Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.

The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.

The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.

The use of motors is prohibited.

R651-205-14. Bear Lake.

The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

R651-205-15. Lost Creek Reservoir.

A vessel may not be operated at a speed greater than wakeless speed at any time.

KEY: boating
March 20, 2001 **73-18-4(1)(c)**
Notice of Continuation May 12, 1997

R651. Natural Resources, Parks and Recreation.
R651-219. Additional Safety Equipment.
R651-219-1. Sound Producing Device.

(1) Vessels 16 feet to less than 40 feet in length shall have on board a means of making an efficient sound, horn or whistle, capable of a four-to-six-second blast.

(2) Vessels 40 feet to less than 65 feet in length shall have on board a horn and a bell. The horn shall be capable of a four-to-six-second blast and audible for one-half mile. The bell shall be designed to give a clear tone.

R651-219-2. Bailing Device.

All vessels, not of self-bailing design, shall have on board an adequate bail bucket or be equipped with a mechanical means for pumping the bilge.

R651-219-3. Spare Propulsion.

Vessels less than 21 feet in length shall have on board at least one spare motor, paddle or oar capable of maneuvering the vessel when necessary. On rivers when one-or-two-man capacity vessels less than 16 feet in length are traveling in a group, the above requirement may be met by carrying one spare oar or paddle for every three vessels in the group. On hard hulled white water kayaks, paddles designed to be strapped to or worn on the hand must meet this requirement.

R651-219-4. Airboat Requirements.

Airboats operated on the Great Salt Lake and adjacent refuges shall also have on board a compass and one of the following: approved flares, a strobe light, or other visual distress signal.

R651-219-5. Equipment Good and Serviceable.

All required safety equipment shall be in good and serviceable condition.

R651-219-6. Law Enforcement Vessels.

No vessel operator except authorized law enforcement and emergency vessel operators may display red or blue flashing lights or sound a siren on any waters of this state.

R651-219-7. Equipment Exemptions.

(1) Sailboards and personal watercraft are exempt from the following rules: Section R651-219-2 bail buckets; Section R651-219-3 spare paddles; and Section R651-225-4 prohibiting riding on exterior surfaces.

(2) Vessels owned by the Lagoon Corporation and operated by its employees or customers under the controlled use and confines of the Lagoon Amusement Park waterways are exempt from the following Sections: R651-215-11 (3), R651-219-2, and R651-219-3.

(3) Vessels owned by the Salt Lake Airport Hilton Inn and operated by its employees or customers under the controlled use and confines of the Salt Lake Airport Hilton Inn waterways are exempt from the following sections: R651-219-2 and R651-219-3.

(4) Racing vessels participating in a sanctioned race may be exempted from certain equipment requirements by the division upon written request to the division. The equipment exemption shall only be in effect the day before and the day of the race if conditions of the exemption are met.

KEY: boating
March 20, 2001 **73-18-8(6)**
Notice of Continuation May 13, 1997

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.

"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.

"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.

"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.

"Natural and Cultural Resources" means those features and values including all lands, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.

"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.

"Park area" means any individual park property in the park system.

R651-601-7. Manager.

"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.

"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.

"Permit" means written authorization by a park representative.

R651-601-10. Posted.

"Posted" means displayed printed instruction or information.

R651-601-11. Person.

"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.

"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:

(1) sales of goods or merchandise.
(2) rentals of equipment.
(3) collection of entrance or admission fees.
(4) collection of storage or use fees.
(5) sales of services.

R651-601-13. Commercial Gain.

"Commercial gain" means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.

"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.

"Special Use Permit" means a temporary authorization or concession, not to exceed one year, for the purpose of conducting commercial activity.

R651-601-16. Cooperative Agreement.

A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

KEY: parks
March 6, 2001 63-11-3
Notice of Continuation June 29, 1999

R651. Natural Resources, Parks and Recreation.
R651-608. Events of Special Uses.
R651-608-1. Permit Requirements.

A special assembly, exhibit, public speech, public demonstration, or special activity or use (in this Rule collectively called "event") shall be by special use permit ("permit").

(1) REQUESTS. The person or group desiring to conduct an event shall request a permit from the local park manager, region or the Division's main office at least 30 business days before the proposed event. Late requests may be accepted subject to the terms of subsection (4) below.

(2) REQUIREMENTS. The Division director or his designee shall have the discretion to grant or deny the request for permit. A permit may be granted only on the following requirements: (a) No event may substantially interrupt the safe and orderly operation of the park or facility; (b) No event may unduly interfere with proper fire, police, ambulance or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto; (c) No event may be reasonably likely to cause injury to persons or property; (d) No event may be held for the primary purpose of advertising the goods, wares or merchandise of a particular business establishment or vendor; (e) No event may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah criminal code or in applicable local ordinances; and (f) liability insurance will be required, co-insuring the Division.

(3) CONFLICTING REQUESTS.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for events that conflict as to time, place, or purpose, the Division director or his designee shall evaluate: (i) the size, nature and purpose of each event; (ii) each event's historical or traditional use of the park or facility; (iii) the date and time each conflicting request was received by the Division: (iv) whether an event would require Division support services; (v) possible alternative places or times for the conflicting events; and (vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the Division in regulating the time, place, and manner of the events.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the immediately preceding paragraph, the Division director or his designee shall resolve the conflict (i) by the parties' agreement to modify the requests to avoid conflicts and accommodate the public interest; or (ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or (iii) by exercising his discretion to deny one or more or all of the requests.

(4) LATE REQUESTS. When a request for permit is not timely made under subsection (1), the request shall state the grounds for its untimeliness. If the Division director or his designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

(5) APPEALS. There shall be no right to administrative appeal of the decision granting or denying a request for permit.

R651-608-2. Events Prohibited without Permit.

Any person, defined as "an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency", or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

KEY: parks
March 6, 2001 **63-11-17(1)(a)**
Notice of Continuation June 29, 1999

R652. Natural Resources; Forestry, Fire and State Lands.
R652-121. Wildland Fire Suppression Fund.
R652-121-100. Authority.

This rule implements Article XVIII of the Utah Constitution and provides for administration of the Wildland Fire Suppression Fund under the authority of Section 65A-8-6.4.

R652-121-200. Normal Fire Suppression Costs.

1. Under the terms of a cooperative fire protection agreement, the state forester shall file an annual budget for operation of a cooperative district with each participating county. The county shall budget an amount for actual fire suppression costs determined to be normal by the state forester.

2. Normal fire suppression costs are defined as the actual costs identified by annual audits of a participating county's financial records and costs paid by the state in the county's behalf under the terms of Sections 65A-8-6 and 65A-8-6.2. The most recent seven-year record will be used. The highest year and lowest year will be deducted and the remaining five years averaged.

3. The seven years of fire suppression costs will be in constant dollars, which allows for the effect of inflation.

4. The minimum county budget for fire suppression costs shall be $5,000. The effect of inflation will be considered every three years. An amount equal to the accumulated inflation over this period will be added to this base budget for fire suppression. This time period began January 1, 1999.

R652-121-300. Annual Sign Up, Effective Payment Period, Annual Assessment Payments and Capitalization.

1. The annual sign up period will be from November 1 through January 10 of the following year.

2. The effective period for payments out of the Wildland Fire Suppression Fund will be June 1 through October 31 of each year. Should the state forester determine the need to extend the fire season as specified in Section 65A-8-9 due to fire severity, all suppression costs incurred during that extension period will be eligible. A participating county may petition the state forester in writing requesting use of the Wildland Fire Suppression Fund to cover wildland fire suppression costs incurred outside the normal fire season.

3. A participating county shall make its assessment fee and any required equity payment by March 15 of each year.

R652-121-400. Determination of Unincorporated Acreage.

1. The unincorporated acreage to be used in determining a portion of the assessment fee for participation in the Wildland Fire Suppression Fund will be the private acreage provided by the county from its ownership records. The acreage figure will be updated by the county every three years.

2. A county shall report all of the unincorporated private acreage within the county in order to participate in the Wildland Fire Suppression Fund.

R652-121-500. Determination of Property Values.

1. The taxable value of property in the unincorporated area of a county will be the locally assessed value of real and personal property provided by the county to the Utah State Tax Commission, Property Tax Division on an annual basis.

2. The county must adhere to Utah State Tax Commission policy for periodic reassessment of property. A county that is found to be in arrears on meeting this requirement will be penalized by increasing the current taxable value of property by 25% in determining the county's assessment fee.

R652-121-600. Determination of Equity Payments.

1. An equity payment is required if a county elects to participate in the Wildland Fire Suppression Fund after the initial sign up period or to reestablish participation in the fund after a county's participation was terminated at the county's choice or for revocation by the state forester. The initial sign up period ended on May 31, 1998.

2. The equity payment is based on what the county's annual assessment fee would have been for the previous three years. In no case will the equity payment exceed three years of assessment.

3. If a county elects to join the suppression fund for the first time after May 31, 2000, an equity payment will be required that is equal to the previous three years' assessment fees.

4. If a county elects to withdraw from the fund or participation is revoked by the state forester, the county may request permission in writing to re-establish participation. Upon acceptance, the county must make an equity payment equal to what its assessment fees would have been for each year it was out of the fund, not to exceed three years.

R652-121-700. Definition of Eligible Suppression and Presuppression Costs.

1. After the County's approved fire suppression budget has been depleted, all fire suppression costs that occur during the fire season, as defined in R652-121-300, directly related to the control of wildfires on forest, range and watershed lands within the unincorporated area of a participating county are eligible for coverage by the Wildland Fire Suppression Fund. The costs of resources directly involved in fire suppression efforts that are paid from the county's wildland fire suppression account are eligible. The county must notify the state forester in writing when the county's budget for normal fire suppression costs has been expended. Area managers will verify to the state forester in writing that a county's fire suppression budget has been depleted.

2. A good faith effort must be made by the counties to recover suppression costs for human caused fires. If the county has evidence that indicates a responsible party for a fire and chooses not to proceed, suppression cost for that fire is not eligible for reimbursement from the Wildland Fire Suppression Fund. After consultation between the county and state, the state forester will determine if a good faith effort has been made to recover suppression cost.

3. Wildland Fire suppression costs recovered under Section 65A-3-4 will be repaid to the Wildland Fire Suppression Fund.

4. Presuppression projects may be funded from the Wildland Fire Suppression Fund when approved in advance by the state forester.

R652-121-900. Clarification of The State's Financial Obligation For Suppression Costs.

If the Wildland Fire Suppression Fund is not adequate to pay all eligible fire suppression costs, prorated expenditure payments will be made to affected counties. The remaining county liability will be shared between the county and state as provided by the current agreement.

R652-121-1000. Agreement For County Participation in Fund.

Pursuant to Section 65A-8-6.2 a county legislative body may enter into a written agreement with the state forester to participate in the Wildland Fire Suppression Fund. The written agreement to authorize a county's participation in the fund may be an addendum to the current cooperative wildland fire agreement between a county and the state forester.

R652-121-1100. Revocation of Participation in Fund.

1. A county's eligibility to participate in the Wildland Fire Suppression Fund may be revoked for failure to:

(a) pay the required assessment or equity fees when due after being notified by the state forester as specified in Subsection R652-121-1100(2).

(b) provide documented unincorporated acreage figures for assessment determination; or

(c) provide total taxable value of unincorporated property as provided annually to the Utah State Tax Commission, Property Tax Division for the assessment determination.

2. The state forester will apprise a county in writing of any deficiency in Subsection R652-121-1100(1) within 30 days following the due date. Deficiencies not remedied within 60 days shall result in revocation of a county's participation in the Wildland Fire Suppression Fund.

R652-121-1200. Definition of Presuppression Activities.

Presuppression activities are those activities related to wildfire prevention, preparedness and mitigation to reduce hazard or risk on eligible lands. Presuppression activities include fuel treatment, fuel breaks, defensible space, codes and ordinances, presuppression plans, wildland fire protection capability, wildland fire suppression training and other practices which reduce hazards or risks in the eligible areas.

R652-121-1300. Application Process For Presuppression Projects.

1. Presuppression project proposals must be submitted to the state forester in writing prior to implementation. The written proposal shall detail:

(a) the location of the project,

(b) the purpose of the project,

(c) the methods of accomplishing the project,

(d) the time line for completion of the project,

(e) the resources needed and their availability,

(f) itemized estimated cost for the project, and

(g) other data required by the state forester.

2. Presuppression project proposals may be submitted by the counties to the state forester from March 1 through April 1 and August 1 through September 1 of each year. The counties will be notified by May 1 or October 1 of the state forester's decision on the proposed projects.

R652-121-1400. Limitation on Presuppression And Fire Management Incentives.

1. The cost of a county's approved presuppression projects shall not exceed 75% of that county's annual assessment fee for the Wildland Fire Suppression Fund.

2. Presuppression projects may be cost shared at a rate between 25% and 75% of the total cost of the project. The cost share rate will be determined by the state forester for each project category on an annual basis. These cost share rates will be communicated to the counties by January 30 of each year

3. Presuppression projects may be proposed for multi-year funded projects. These multi-year funded projects may not exceed three years. Annual cost share payments to a county for a multi-year project may not exceed 75% of that county's annual assessment fee. Project proposals will be developed to reflect annual work plans and payments to complete the project over a specified number of years.

4. The costs that may be reimbursed for presuppression projects may be limited by legislative appropriation. The Division shall not authorize payments for presuppression projects that exceed 75% of the total annual assessment fees paid into the fund by participating counties.

R652-121-1450. Payment for Presuppression Projects.

1. Cost share payment for presuppression projects will be made to the counties when:

(a) the project is completed, inspected and certified by the area manager; and

(b) the county makes a written request for reimbursement with documented costs.

R652-121-1600. State Land Exclusion.

Wildland fire suppression costs on state-owned lands are not eligible to be covered from the Wildland Fire Suppression Fund.

KEY: administrative procedure, wildland fire fund
March 12, 2001 65A-8-6.4

R657. Natural Resources, Wildlife Resources.
R657-27. License Agent Procedures.
R657-27-1. Purpose and Authority.

Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

R657-27-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a written request to be authorized by the division to sell wildlife documents.

(b) "Conditional Big Game Permit Sales Agreement" means a supplemental agreement to the License Agent Authorization allowing a license agent to sell big game hunting permits that are held under a quota.

(c) "License agent" means a person authorized by the division to sell wildlife documents.

(d) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.

(e) "Presiding officer" means the director of the division or the director's designee.

(f) "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Section 23-19-15.

(g) "Wildlife documents" means licenses, permits, tags and Heritage Certificates.

R657-27-3. Application.

(1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office.

(2) License agent applications shall be accepted from any person located within Utah or in close proximity to Utah.

(3) Applications shall be processed within 30 days.

(4) The applicant must:

(a) complete and return the application to the Licensing Section in the Salt Lake Office; and

(b) pay a non refundable application fee.

(5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

(1) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents;

(c) The applicant has previously been authorized to sell wildlife documents and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was terminated by the division as a license agent;

(d) The applicant provided false information on the license agent application;

(e) The applicant has been convicted of a wildlife related violation.

(2) The division shall send the applicant a written notice stating the reason for denial.

(3) If the division approves the license agent application a license agent authorization shall be sent to the applicant.

(4) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

(5) The license agent authorization must be returned to the Licensing Section in the Salt Lake Office within 30 days of being received.

(6) Each license agent authorization shall be established for a term of five years.

R657-27-5. Surety Bond Requirement.

(1) After approval, but before the license agent authorization is executed, the division may require the applicant to post a reasonable surety bond in an amount determined by the division.

(2) The division may require any existing license agent to obtain a reasonable surety bond in an amount determined by the division after providing the license agent with 30 days written notice.

(3) The division may require a reasonable increase in the amount of the bond after providing the license agent with 30 days written notice.

R657-27-6. License Agent Big Game Permit Sales Agreement.

(1) Upon approval of license agent authorization, a license agent may only sell any big game permits held under a quota by entering into a Conditional Big Game Permit Sales Agreement with the division.

(2) The division shall, prior to May 1 annually, send a Conditional Big Game Permit Sales Agreement form to each authorized license agent eligible to sell wildlife documents.

(3)(a) The license agent shall:

(i) complete all information indicated in the agreement; and

(ii) sign and date the agreement.

(b) The license agent signature must be notarized.

(c) The agreement must be returned by mail or hand-delivery to any division office and must be received no later than the date indicated under the terms on the agreement form. Facsimiles will not be accepted.

(d) Agreements received after the date as indicated on the agreement form may be returned.

(4)(a) The division may not enter into an agreement with any license agent who was given reasonable notice of the time period for entering into the agreement and fails to return a complete agreement to the division.

(b) The division may notify a license agent who has made an error in completing the agreement form and may afford an opportunity for correction. However, if the division is unable to contact the license agent within two weeks following the filing date indicated on the agreement and correct the error, the agreement shall be void and the license agent may not receive authorization to sell big game permits held under a quota.

(5) By signing the agreement, the license agent agrees to abide by the terms of the agreement.

R657-27-7. License Agent Obligations.

(1) Each license agent shall:

(a) report all wildlife document sales to the division on or before the 10th day of each month;

(b) remit all proceeds from wildlife document sales, minus remuneration, to the division on or before the 10th day of each month;

(c) retain all money obtained from wildlife document sales separate from the private funds of the license agent except remuneration;

(d) keep wildlife documents out of the public view during business hours;

(e) keep wildlife documents in a safe or locked cabinet after business hours;

(f) display all signs and distribute proclamations provided by the division;

(g) have all sales clerks and management staff available for sales training; and

(h) maintain a License Agent Manual provided by the division and make it available to the license agent's staff.

R657-27-8. Lost or Stolen Wildlife Documents.

(1) The license agent shall act as bailee for purposes of safeguarding all wildlife documents issued to the agent by the division.

(2)(a) The license agent shall remit full payment to the division for any wildlife documents lost, stolen, or unaccounted for unless otherwise relieved for good cause by the director.

(b) Payments made to the division for any wildlife documents that are lost or unaccounted for may be refunded if the wildlife documents are returned to the Licensing Section in the Salt Lake office by June 30 of the current fiscal year.

R657-27-9. Audits.

(1) License agents are subject to an audit without prior notification anytime during normal business hours to assess financial and procedural compliance with statute, rule, and the terms of the license agent authorization.

(2) The division shall provide a written report to the license agent of any finding of noncompliance within five days of the completion of the audit.

R657-27-10. Checks Returned for Non-sufficient Funds.

(1) The division may require a license agent to remit payment for wildlife documents in the form of a cashiers check or money order if any check from a license agent is returned to the division for non sufficient funds.

(2) The presiding officer may revoke a license agent authorization pursuant to Section 63-46b-20 if payment is not made to the division within five business days after the license agent receives written notification of the returned check.

R657-27-11. Change of Business Ownership.

(1) License agent authorizations are nontransferable.

(2) The license agent shall notify the division of any anticipated change of ownership of the license agent's business at least 30 days prior to the change of ownership.

(3) Prior to change of ownership the license agent shall:

(a) remit payment for all wildlife documents sold minus remuneration; and

(b) return all unsold wildlife documents to the division.

R657-27-12. Revocation of License Agent Authorization.

(1) The presiding officer may revoke a license agent authorization pursuant to Chapter 46b, Title 63, Utah Administrative Procedures Act, if the presiding officer determines that the agent or the agent's employee violated:

(a) the terms of the license agent authorization;

(b) the terms of the Big Game Permit Sales Agreement;

(c) any provision of Title 23, Wildlife Resources Code; or

(d) any rule promulgated under Title 23, Wildlife Resources Code.

(2) The presiding officer may hold a hearing to determine matters relating to the license agent revocation if the license agent makes a written request for a hearing within 10 days after the notice of agency action is issued.

R657-27-13. Termination of Authorization by the License Agent.

(1) A license agent may terminate a license agent authorization by submitting a written request to the Licensing Section in the Salt Lake Office.

(2) Any request for termination shall state the requested date of termination.

(3) On or before the effective date of termination the license agent shall:

(a) discontinue selling wildlife documents;

(b) return all unsold wildlife documents to the division; and

(c) return to the division any signs, proclamations or other information provided by the division.

(4) On or before the 10th day of the month following the date of termination the license agent shall remit payment for all wildlife documents minus remuneration to the division.

R657-27-14. Reapplying for a License Agent Authorization.

(1) The division may not renew a license agent authorization.

(2) At the end of the five-year term of authorization to sell wildlife documents, a license agent may reapply for a license agent authorization by following the application procedures prescribed in this rule.

R657-27-15. Violation.

(1) It is unlawful for a license agent to sell:

(a) any wildlife documents in violation of the License Agent Authorization; or

(b) any big game permits in violation of the Big Game Permit Sales Agreement.

KEY: licensing, wildlife, wildlife law, rules and procedures
March 26, 2001 23-19-15
Notice of Continuation April 11, 1997

R686. Professional Practices Advisory Commission, Administration.

R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.

R686-100-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

E. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

F. "Commission" means the Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et seq.

G. "Chair" means the Chair of the Commission.

H. "Complaint" means a written allegation or charge against an educator.

I. "Complainant" means the Utah State Office of Education.

J. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training, to obtain a license.

L. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

M. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

N. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing the hearing officer, after consulting with members of the Commission assigned to assist in the hearing, prepares a hearing report and submits it to the Executive Secretary.

O. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The hearing officer may not be an acting member of the Commission. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

P. "Hearing Panel" means a hearing officer and three or more members of the Commission agreed upon by the Commission to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

Q. "Hearing report" means a report prepared by the hearing officer with the assistance of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

R. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

S. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

T. "Jurisdiction" means the legal authority to hear and rule on a complaint.

U. "Licensing file" means a file that is opened and maintained on an educator following a written complaint to the Commission.

V. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been

suspended or revoked.

W. "Office" means the Utah State Office of Education.

X. "Party" means the complainant or the respondent.

Y. "Recommended disposition" means a recommendation for resolution of a complaint.

Z. "Request for agency action" means a document prepared by the Executive Secretary containing one or more allegations of misconduct by an educator, a recommended course of action, and related information.

AA. "Respondent" means the party against whom a complaint is filed.

BB. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

CC. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

DD. "Stipulated agreement" means an agreement between a respondent and the Board or a respondent and the Commission under which disciplinary action against an educator's license status has been taken, in lieu of a hearing.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and licensing hearings for the Commission to follow. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)(d). However, the Commission reserves the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63-46b as necessary to adjudicate an issue.

R686-100-3. Receipt of Allegations of Misconduct and Disposition by Commission.

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The allegations and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by filing a written request for information with the Executive Secretary.

(3) Allegations received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

R686-100-4. Review of Request for Agency Action.

A. Initial Review: Upon reviewing the request, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of action which the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request. The informant shall be served with notice of the action. If the informant believes that the dismissal has been made in error, the informant may request review by the State Superintendent of Public Instruction within 10 days of the mailing date of the Notice of Dismissal. The Superintendent's decision relative to the dismissal is final.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall ask the Investigations Unit to appoint an investigator to gather evidence relating to the allegations. The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations, including to the extent reasonably practicable all persons specifically named in the request for agency action, and prepare a written report of the findings of the investigation. Should the investigator discover evidence of any additional allegation which should have been included in the original request, it may be included in the investigation report. The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission. The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated and a copy of the letter to the employing school district or to the district of most recent employment, with information that an investigation has been initiated.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, the Executive Committee shall recommend to the Commission to dismiss the request for agency action as provided in Section R686-100-4B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the

Executive Committee shall recommend to the Commission to direct the Executive Secretary to prepare and serve a complaint and a copy of these rules upon the respondent. The complaint shall have a heading similar to that used for the request for agency action, and shall include in the body:

(a) A statement of the legal authority and jurisdiction under which the action is being taken;

(b) A statement of the facts and allegations upon which the complaint is based;

(c) Other information which the Commission believes to be necessary to enable the respondent to understand and address the allegations;

(d) A statement of the potential consequences should the allegations be found to be true;

(e) A statement that, if the respondent wishes to respond to the complaint or request a hearing, or discuss a stipulated agreement, a written response shall be filed with the Executive Secretary of the Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111 within 30 days of the date when the complaint was mailed to the respondent, and the potential consequences should the respondent default by failing to respond to the complaint within the designated time;

(f) Notice that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's response and hearing request by the Executive Secretary, unless a different date is approved by the Commission for good cause shown or is agreed upon by both parties in writing.

(3) Provide the Commission with notice of the action taken.

F. RESPONSE to the complaint: If the respondent wishes to respond to the complaint, the respondent shall submit a written response signed by the respondent or his representative to the Executive Secretary within 30 days of the mailing date of the complaint. The response may include a request for a hearing or a stipulated agreement and shall include:

(1) The file number of the complaint;

(2) The names of the parties;

(3) A statement of the relief that the respondent seeks; and

(4) A statement of the reasons that the relief requested should be granted.

(5) Final Review: As soon as reasonably practicable after receiving the response, or following the passage of the 30 day response period if no response is received, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The Executive Committee shall then recommend one of the following to the Commission:

(a) Enter a Default: If the respondent fails to file a response, fails to request a hearing, fails to request a stipulated agreement within 30 days after service of the complaint, or surrenders a license in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend to the Commission to enter the respondent's default and direct the Executive Secretary to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the informant and respondent shall each be served with notice of the dismissal. If the informant believes that the dismissal has been made in error the informant may request review by the State Superintendent of Public Instruction within 10 days of service of notice of the dismissal. The Superintendent's decision concerning the dismissal is final.

(c) Schedule a Hearing: If the respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.

(d) Respond to a request for a stipulated agreement: If the respondent requests to enter into a stipulated agreement, the Executive Secretary shall inform the Commission that the Commission may reject the request or authorize the Executive Secretary to meet with the respondent to prepare recommendations for a stipulated agreement.

(i) A stipulated agreement shall, at minimum, include the following:

(A) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the respondent's response;

(B) A statement that the respondent has chosen to surrender his license rather than contest the charges in a hearing;

(C) A commitment that the respondent shall not provide professional services in a public school in any state or otherwise seek to obtain or use a license in any state unless or until the respondent first obtains a valid Utah license or clearance from the Board to obtain such a license;

(D) Provision for surrender of respondent's license;

(E) Acknowledgment that the surrender and the stipulated agreement will be reported to other states through the NASDTEC Educator Information Clearinghouse; and

(F) Other relevant provisions applicable to the case, such as remediation, counseling, and conditions--if any--under which the respondent could seek restoration of license.

(ii) The stipulated agreement shall be forwarded to the Commission for consideration.

(iii) If the Commission rejects the request or the stipulated agreement, the respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(iv) If the Commission accepts the stipulated agreement, the agreement shall be forwarded to the Board for consideration.

(v) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(e) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, a written reprimand, or an agreement not to teach.

(i) Documentation of this disciplinary action shall be sent to the respondent's employing school district or to a district

where the respondent finds employment, if so directed.

(ii) Additional conditions of retention and documentation of disciplinary actions taken by the Commission are provided in R686-100-15.

G. Agreement not to teach:

(1) If compelling circumstances exist, as determined by the Commission, an educator may be offered an agreement not to be employed in the schools of any state without thorough and exhaustive review of all allegations of misconduct.

(2) Compelling circumstances may include a single serious allegation with mitigating circumstances that did not involve students within a long-term otherwise exemplary career.

(3) Other provisions:

(a) The educator shall surrender his educator license to the Commission;

(b) The NASDTEC Clearinghouse shall receive notification of the invalidation of the educator's license;

(c) The educator shall provide annually to the Commission employment and current address information;

(d) Acknowledgment may be made of the existence of the agreement not to teach, otherwise the agreement and its provisions shall remain confidential between the Commission and the educator.

(e) Should the educator breach the agreement not to teach, the agreement shall be voidable at the sole discretion of the Commission and the educator shall be subject to further disciplinary action by the Commission or the Board.

H. Surrender:

(1) Should an educator surrender his license, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's licensing file explaining the circumstances of the surrender.

(4) Surrender of an educator's license is not a final disposition. Surrender shall include a stipulated agreement or findings of fact to complete the educator's misconduct file. The Board shall also take action to suspend or revoke a license following a surrender.

R686-100-5. Hearing Procedures.

A. Scheduling the Hearing: The Commission shall agree upon Commission panel members, and the Executive Secretary shall appoint a hearing officer from among a list of hearing officers approved by the Commission, and schedule the date, time, and place for the hearing. The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the response is received by the Executive Secretary. If exceptional circumstances exist which make it impracticable for a party to be present in person, the Executive Secretary may, with the consent of the parties, permit participation by electronic means. The required scheduling periods may be waived by mutual written consent of the parties or by the Commission for good cause shown.

B. Change of Hearing Date:

(1) A request for change of hearing date shall be submitted in writing and received by the Executive Secretary at least five days prior to the scheduled date of the hearing. The request may originate from either party and shall show cause.

(2) The Executive Secretary shall make the determination of whether the cause stated in the request is sufficient to warrant a change of hearing date.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the party making the request and the hearing shall proceed as originally scheduled.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for exceptional circumstances.

R686-100-6. Appointment and Duties of the Hearing Panel.

A. Hearing Officer: The Executive Secretary shall appoint a hearing officer at the request of the Commission to chair the hearing panel and conduct the hearing. The hearing officer:

(1) May require the parties to submit briefs and lists of witnesses prior to the hearing;

(2) Shall preside at the hearing and regulate the course of the proceedings;

(3) May administer oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(4) May take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(5) Shall prepare a hearing report at the conclusion of the proceedings in consultation with other panel members.

B. Commission Panel Members: The Commission shall agree upon three or more Commission members to serve as Commission members of the hearing panel. As directed by the Commission, former Commission members who have served on the Commission within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current Commission members.

(1) The majority of a panel shall be educators.

(2) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is an administrator, at least one panel member shall be an administrator unless the respondent objects to the configuration of the panel.

(3) Duties of the Commission panel members include:

(a) Assisting the hearing officer by providing information concerning common standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) Asking questions of all witnesses to clarify specific issues;

(c) Reviewing all briefs and evidence presented at the hearing;

(d) Assisting the hearing officer in preparing the hearing report.

(4) The panel members shall receive for review relevant written materials including the initial complaint and briefs if ordered by the hearing officer, at least 30 minutes prior to the hearing.

(5) The Executive Secretary may make an emergency substitution of a Commission panel member for cause with the agreement of the parties. The agreement should be in writing

but if time does not permit written communication of the agreement to reach the Executive Secretary prior to the scheduled time of the hearing, an Acceptance of Substituted Hearing Panel Member shall be signed by the parties prior to commencement of the hearing.

C. Disqualification of a panel member:

(1) Hearing Officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of Section R686-100-6C(1) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) Commission panel member:

(a) A party may seek disqualification of a Commission panel member by submitting a written request for disqualification to the hearing officer, which request must be received not less than 15 days before a scheduled hearing. The hearing officer shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall appoint a replacement and the hearing officer shall, if necessary, reschedule the hearing.

(b) If the hearing officer denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer to disqualify the panel member.

(c) If a disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall agree upon a replacement and the hearing officer shall, if necessary, reschedule the hearing.

(d) The decision of the State Superintendent is final.

(e) Failure of a party to meet the time requirements of Section R686-100-7C(2) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

R686-100-7. Preliminary Instructions to Parties to a Hearing.

A. Not less than 20 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and school district affiliations of the Commission members on the hearing panel, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 15 days before the date of the hearing, the respondent and the complainant shall serve the following upon the other party and submit a copy and proof of service to the hearing officer:

(1) A brief containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who will represent the party at the hearing, a list of witnesses who will be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which will be submitted. If either party fails to comply with identification of witnesses or documentary evidence in a fair and timely manner and consistent with the provisions of this rule, the hearing officer may limit either party's presentation of witnesses and documentary evidence at the hearing.

C. Upon receipt of any of the above documents, the hearing officer shall provide a copy of the documents to each of the Commission panel members for review at least one hour prior to the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer under Section R686-100-7A, including time requirements for service, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party.

E. Parties shall provide materials to the hearing officer, panel members and Commission as directed under this rule. Materials shall not be provided directly to panel members until and unless parties are so directed by the hearing officer.

R686-100-8. Hearing Parties' Representation.

A. Complainant: The Complainant shall be represented by a person appointed by the Investigations Unit of the Utah State Office of Education.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person of his choosing.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

R686-100-9. Discovery Prior to a Hearing.

A. Discovery shall be permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer makes the final determination as to the scope of discovery.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued upon request at least five working days prior to the hearing by the Executive Secretary in accordance with Section 53A-6-603 when requested by either party or any of the panel members.

E. Either party or its representative may request the names of witnesses who have been asked to testify for the opposing party and to receive a copy of or examine all documents and exhibits that the opposing party intends to present as evidence during the hearing.

F. No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least five days prior to the hearing. The parties may waive such time period only by written agreement.

G. No expert witness report or testimony may be presented at the hearing unless the requirements of Section R686-100-13 have been met.

R686-100-10. Burden and Standard of Proof for Commission Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing shall bear the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to Commission proceedings. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to the Commission in reaching a decision.

E. The applicability and admissibility of evidence consistent with this rule shall be in the sole discretion of the hearing officer.

R686-100-11. Deportment.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may expel persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

R686-100-12. Hearing Record.

A. The hearing shall be tape recorded at the Commission's expense, and the tapes shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may not make recordings of the proceedings without notice to and consent of the Executive Secretary.

C. Any party, at his own expense, may have a person approved by the Commission prepare a transcript of the hearing.

D. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

E. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by order of the Board.

F. Taped proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the State Office of Education.

R686-100-13. Expert Witnesses in Commission Proceedings.

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 20 days prior to the hearing date.

B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He shall be subject to cross-examination by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given their testimony and not to its admissibility.

D. Experts who are members of the Complainant's staff or a school district staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 10 days prior to the hearing date.

R686-100-14. Evidence and Participation in Commission Proceedings.

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. The hearing officer shall afford each party the opportunity to produce witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. If a party intends to submit documentary evidence, the party intending to present such evidence shall provide one copy to each member of the hearing panel at least one hour prior to the hearing, and one copy to the opposing party.

D. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits,

shall be given under oath.

E. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the hearing officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the respondent's presence. If the hearing officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.

(b) The respondent may not be present during the child's testimony;

(c) The hearing officer shall ensure that the child cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with, the child; and

(e) Only hearing panel members and the attorneys may question the child.

(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:

(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;

(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.

(4) If the hearing officer determines that the testimony of a child will be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.

F. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

G. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has:

(a) Been convicted of a felony;

(b) Been charged with a felony and subsequently convicted of a lesser related charge pursuant to a plea bargain or plea in abeyance; or

(c) Lost his license in another state through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, if the person would not currently be eligible to regain his license in that state.

H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.

R686-100-15. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall prepare, sign and issue a Hearing Report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent;

(3) A statement of applicable law and rule;

(4) A recommended disposition of the Commission panel members which shall be one of the following:

(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Warning: The hearing report shall indicate that respondent's conduct is deemed unprofessional and that the hearing report shall constitute an official warning. The hearing

report may indicate if the letter of warning shall be sent to the employing school district, if the letter and notation of warning shall be retained in the respondent's licensing and CACTUS files and for how long the letter and notation of warning shall be retained. If the hearing report has no specified time period for retention of the letter of warning, the letter and notation shall be retained permanently. The report shall also state that no further action concerning the complaint should be taken and that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(c) Reprimand: The hearing report shall indicate that the respondent's conduct is deemed unprofessional and that the hearing report shall constitute an official reprimand. The hearing report shall indicate that the employing school board shall receive a copy of the reprimand and that record of the reprimand shall be made on all Utah State Board of Education licensing records maintained in the licensing file, to include a notation of the letter of reprimand in the respondent's licensing files. The hearing report may also include a recommendation for how long the reprimand and the notation of the reprimand shall be maintained in the respondent's file and conditions under which it could be removed. If the hearing report has no specified time period for retention of the letter and notation of reprimand, they shall be retained permanently. The report shall also state that no further action concerning the complaint should be taken and that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(d) It is the respondent's responsibility to petition the Commission for removal of letters of warning and reprimand from his licensing and CACTUS files.

(e) Probation: The hearing report shall determine that the respondent's conduct was unprofessional, that the respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) a probationary time period;

(ii) conditions that can be monitored;

(iii) a person or entity to monitor a respondent's probation;

(iv) a statement providing for costs of probation.

(v) whether or not the respondent may work in any capacity in education during the probationary period.

A probation may be stated as a plea in abeyance: The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be completed.

(f) Suspension: The hearing report shall recommend to the State Board of Education that the license of the respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of his license. The hearing report shall indicate that, should the Board confirm the recommended decision, the respondent shall return the printed suspended license to the State Office of Education and that the Educator Licensing Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the suspension in accordance with R277-514.

(g) Revocation: The hearing report shall recommend to the State Board of Education that the license of the respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the respondent shall return the revoked license to the State Office of Education and that the Educator Licensing Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national licensing offices or clearing houses of the revocation in accordance with R277-514.

(5) The hearing report may recommend that the warning letter or that the reprimand remain permanently in the licensing file. The hearing report shall also provide that the substance of the warning letter or reprimand or terms of probation may be communicated by designated USOE employees to prospective employers upon request.

(6) Notice of the right to appeal; and

(7) Time limits applicable to appeal.

B. Processing the Hearing Report:

(1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.

(4) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of the evidence does not support the conclusions of the hearing report, the Commission as a whole may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).

(5) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the hearing officer's report and do one of the following:

(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the State Board of Education for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(6) If the Commission determines that procedural errors or that the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon,

the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and panel.

C. Consistent with Section 63-2-301(1)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63-2-301(1)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.

D. Deadlines within this section may be waived by the Commission for good cause shown.

R686-100-16. Default Procedures.

A. An order of default may be issued against a respondent under any of the following circumstances:

(1) The Executive Secretary may enter an order of default by preparing a report of default including the order of default, a statement of the grounds for default, and a recommended disposition if the respondent fails to file a response to a complaint for an additional 20 days following the time period allowed for response to a complaint under R686-100-5E.

(2) The hearing officer may enter an order of default against a respondent by preparing a hearing report including the order of default, a statement of the grounds for default and the recommended disposition if:

(a) The respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin.

(b) The respondent or the respondent's representative is guilty of serious misconduct during the course of the hearing process as provided under Section R686-100-8D.

B. The report of default or hearing report shall be forwarded to the Commission by the Executive Secretary for further action under Section R686-100-16B.

R686-100-17. Appeal.

A. Either party may appeal a final action or recommendation of the Commission by requesting review following the procedures of R277-514-3 or R277-514-4.

B. If a party elects to appeal a Commission recommendation for a suspension of two years or more, or to appeal a Commission determination regarding a license revocation, the appellant shall follow the procedures of R277-514-3.

C. If a party elects to appeal a Commission recommendation for a suspension of less than two years or for any other issue, dismissal, or failure to discipline, the appeal shall be made directly to the Board under R277-514-4B.

D. The request for appeal shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

R686-100-18. Remedies for Individuals Beyond Commission Actions.

Despite Commission or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

R686-100-19. Application for Licensing Following Denial or Loss of License.

A. An individual who has been denied licensing or lost his license through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider the possibility of a grant or reinstatement of a license.

(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111, and shall have the following heading:

TABLE 1

Jane Doe, Petitioner vs Utah State Office of Education Respondent.	Request for Agency Action Following Denial or Loss of License File no.: .....

B. The body of the request shall contain the following information:

(1) Name and address of the individual requesting review;

(2) Action being requested;

(3) Evidence of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations;

(4) Reasons for reconsideration of past disciplinary action;

(5) Signature of person requesting review.

C. The Executive Secretary shall review the request with the Commission.

(1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.

(2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.

D. Burden of Proof: The burden of proof for granting or reinstatement of a license shall fall on the individual seeking the license.

(1) Individuals requesting reinstatement of a suspended license must show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.

(2) Individuals requesting licensing following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for licensing as if the individual had never been licensed in Utah or any other state.

(3) Individuals requesting licensing following denial shall

show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.

R686-100-20. Reinstatement Hearing Procedures.

A. The individual seeking reinstatement of his license shall be the petitioner.

B. The petitioner shall have the responsibility of presenting the background of the case.

C. The petitioner shall present documentation or evidence that supports reinstatement.

D. The respondent (the State) shall present any evidence or documentation that would not support reinstatement.

E. Other evidence or witnesses shall be presented consistent with R686-100-14.

F. The appointed hearing officer shall rule on other procedural issues in a reinstatement hearing in a timely manner as they arise.

R686-100-21. Temporary Suspension of License Pending a Hearing.

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the respondent's license pending final Board action.

B. Evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

KEY: teacher certification, conduct*, hearings*
March 6, 2001 53A-6-306(1)(a)

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.
R708-3-1. Purpose.

The purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

R708-3-2. Authority.

This rule is authorized by Subsections 53-3-209(2), 53-3-221(4), and 63-46b-5(1).

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the Utah Safety Council or the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents, the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) This rule incorporates by reference "The Code Violation Table", dated February 01, 2001, published by the Driver License Division, Utah Department of Public Safety, which is available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560. This document lists the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing a defensive driving course as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

R708-3-6. Point System Thresholds for Drivers Age 21 and Older.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 150 to 199 points: driver is sent a warning letter;

(b) 200 points: driver must appear for a hearing;

(c) 200 to 299 points: driver may be placed on probation or suspended for three months;

(d) 300 to 399 points: driver is suspended for 3 months;

(e) 400 to 599 points: driver is suspended for 6 months; and

(f) 600 or more points: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) The suspension time is doubled, up to a maximum of one year, for a second or subsequent suspension within a three year period.

R708-3-7. Separate Point System for Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a

moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months; and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

R708-3-9. Hearing.

Drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and R708-35.

KEY: traffic violations, point-system
March 6, 2001 53-3-209(2)
Notice of Continuation August 5, 1997 53-3-221(4)

R746. Public Service Commission, Administration.
R746-340. Service Quality for Telecommunications Corporations.
R746-340-1. General.

A. Application of Rules -- These rules promulgated herein shall apply to each telephone corporation, as defined in Subsection 54-8b-2(16).

1. These rules govern the furnishing of communications services and facilities to the public by a telecommunications corporation subject to the jurisdiction of the Commission. The purpose of these rules is to establish reasonable service standards to the end that adequate and satisfactory service will be rendered to the public.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending its rules pursuant to applicable statutory procedures, nor shall the adoption of these rules preclude the Commission from granting temporary exemptions to rules in exceptional cases as provided in R746-100-16, Deviation from Rules.

B. Definitions -- In the interpretation of these rules, the following definitions shall apply:

1. "Allowed Service Disruption Event" -- an event when a telecommunications corporation is prevented from providing adequate service due to:

a. A customer's act;

b. A customer's failure to act;

c. A governmental agency's delay in granting a right-of-way or other required permit;

d. A disaster or an act of nature that would not have been reasonably anticipated and prepared for by the telecommunications corporation;

e. A disaster of sufficient intensity to give rise to an emergency being declared by state government.

f. A work stoppage, which shall include a grace period of six weeks following return to work.

g. A cable cut outside the telecommunications corporation's control affecting more than 20 pairs.

h. A public calling event, busy calling or dial tone loss due to mass calling or dial-up event.

2. "Central Office" -- A building that contains the necessary telecommunications equipment and operating arrangements for switching, connecting, and inter-connecting the required local, interoffice, and interexchange services for the general public.

3. "Central Office Area" -- A geographic area served by a central office.

4. "CFR" means the Code of Federal Regulations, 2000 edition.

5. "Choke Network Trunk Groups" -- A network with special trunking and special prefixes in place to manage the use of mass-calling-numbers.

6. "Commission" -- Public Service Commission of Utah.

7. "Commitment" -- A promise by a telecommunications corporation to a customer specifying a date and time to provide a service.

8. "Customer" -- A person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency, provided with telecommunications services by a telecommunications corporation.

9. Customer trouble reports include:

a. "Trouble Report" -- A customer report attributable to the malfunction of a telecommunications corporation's facilities and includes repeat trouble reports.

b. "Out of Service Trouble Report" -- A report used when a customer reports there is neither incoming nor outgoing telecommunications capability.

c. "Repeat Trouble Report" -- A report received on a customer access line within 30 days of a closed trouble report.

10. "Exchange" -- A unit established by a telecommunications corporation for the administration of telecommunication services in a specified geographic area. It may consist of one or more central office areas together with associated outside plant facilities used in furnishing telecommunications services in that area.

11. "Exchange Service Area" -- The geographical territory served by an exchange.

12. Held Order -- A request for basic exchange line service delayed beyond the initial commitment date due to a lack of facilities which the telecommunications corporation is responsible for providing.

13. "Interconnection Trunk Group" -- Connects the telecommunications corporation's central office or wire center with an other telecommunications corporation's facilities.

14. "Local Access Line" -- A facility, totally within one central office area, providing a telecommunications connection between a customer's service location and the serving central office.

15. "Out of Service" -- When there exists neither incoming nor outgoing telecommunication capability.

16. "Party Line Service" -- A grade of local exchange service which provides for more than one customer to be served by the same local access line.

17. "Tariff" -- A portion or the entire body of rates, tolls, rentals, charges, classifications and rules, filed by the telecommunications corporation and approved by the Commission.

18. "Telecommunications Corporation" -- A "telephone corporation" as defined in Section 54-2-1(24).

19. "Voice Grade Service" -- Service that at a minimum, includes:

a. providing access to E911, which identifies the exact location of the emergency caller;

b. Two-way communications with a clear voice each way;

c. Ability to place and receive calls; and

d. Voice band between 300 HZ and 3000 HZ.

20. "Wire Center" -- The building in which one or more local switching systems are installed and where the outside cable plant is connected to the central office equipment.

R746-340-2. Records and Reports.

A. Availability of Records -- Each telecommunications corporation shall make its books and records open to inspection by representatives of the Commission, the Division of Public Utilities, or the Committee of Consumer Services (or any successor agencies) during normal operating hours.

B. Retention of Records -- All records required by these rules shall be preserved for the period of time specified at 47 CFR 42, incorporated by this reference.

C. Reports --

1. Each telecommunications corporation shall maintain records of its operations in sufficient detail to permit review of its service performance.

2. Central offices with more than 500 local access lines, shall each report as promptly as possible to the Commission and the local news media, including, but not limited to, radio, TV, and newspaper, when applicable, failure or damage to the equipment or facilities which disrupts the local or toll service of 25 percent or more of the local access lines in that central office for a time period in excess of two hours.

D. Uniform System of Accounts -- The Uniform System of Accounts for Class A and Class B telephone utilities, as prescribed by the Federal Communications Commission at 47 CFR 32 is the prescribed system of accounts to record the results of Utah intrastate operations.

E. Data to be Filed with the Commission --

1. Terms and Conditions of Service -- Each telecommunications corporation shall have its tariff, price lists, etc., which describe the terms and conditions under which it offers public telecommunications services on file with the Commission, and where applicable, in accordance with the rules governing the filing of the information as prescribed by the Commission. It shall also provide the same information to the Commission in electronic format as requested by the Commission.

2. Exchange Maps -- Each telecommunications corporation shall have on file with the Commission an exchange area boundary map for each of its exchanges within the state. Each map shall clearly show the boundary lines of the exchange area wherein the telecommunications corporation serves. Exchange boundary lines shall be located by appropriate measurement to an identifiable location where that portion of the boundary line is not otherwise located on section lines, waterways, railroads, roads, etc. Maps shall show the location of major highways, section lines, geographic township and range lines and major landmarks located outside municipalities. An approximate distance scale shall be shown on each map.

R746-340-3. Engineering.

A. Utility Plant -- Utility plant shall be designed, constructed, maintained and operated in accordance with the provisions outlined in the National Electrical Safety Code, 1993 edition, incorporated by reference.

B. Party-line Service -- When party-line service is to be provided, no more than eight customers shall be connected on one local access line, unless approved by the Commission. The telecommunications corporation may re-group customers as may be necessary to carry out the provisions of this rule.

R746-340-4. Emergency Operation.

A. Emergency Service -- Telecommunications corporations shall make reasonable arrangements to meet emergencies resulting from failures of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunication service.

B. Battery Power -- Each central office shall have a minimum of three hours battery reserve.

C. Auxiliary Power -- In central offices exceeding 5,000 lines, a permanent auxiliary power unit shall be installed.

R746-340-5. Maintenance.

A. Maintenance of Plant and Equipment --

1. Each telecommunications corporation shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system to permit the rendering of safe, adequate and continuous service at all times.

2. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and the adequate service performance of the plant affected.

B. Customer Trouble Reports --

1. Each telecommunications corporation shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and response to each complaint. The telecommunications corporation shall maintain a record of trouble reports made by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the report, and the action taken to clear the trouble or satisfy the complaint.

2. Provision shall be made to clear emergency out-of-service trouble at all hours, consistent with the bona fide needs of customers and the personal safety of utility personnel.

3. Provisions shall be made to clear other out-of-service trouble not requiring unusual repair, within 48 hours of the report received by the telecommunications corporation, unless the customer agrees to another arrangement.

4. If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

C. Inspections and Tests -- Each telecommunications corporation shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving efficient operation of its system and rendering safe, adequate, and continuous service. It shall file a description of its inspection and testing program with the Commission showing how it will monitor and report compliance with Commission rules or standards.

D. Planned Service Interruptions -- If service must be interrupted for purposes of rearranging facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each telecommunications corporation shall attempt to notify each affected customer in advance of the interruption. Emergency or alternative service shall be provided, during the period of the interruption, to assure communication is available for local law enforcement and public safety units and agencies.

R746-340-6. Safety.

A. Safety -- Each telecommunications corporation shall:

1. require its employees to use suitable tools and equipment to perform their work in a safe manner;

2. instruct employees in safe work practices;

3. exercise reasonable care in minimizing the hazards to which its employees, customers and the general public may be subjected.

R746-340-7. End User Service Standards For All Telecommunications Corporations.

A. Public Telecommunications Services -- A telecommunications corporation providing public telecommunications services shall, excluding documented Allowed Service Disruption events listed under R746-340-1(B)(1):

1. meet minimum voice grade requirements as defined in R746-340-1(B)(19);

2. meet network call completion standards:

a. provide dial tone within three seconds on at least 98 percent of tested calls placed during average daily busy hours each month for each wire center; and

b. assure that no interoffice facilities entirely within a telecommunications corporation's network, except choke network trunks, exceed two percent blocking. Intertandem facilities shall be governed by R746-365.

R746-340-8. End User Service Standards for Incumbent Telecommunications Corporations with 30,000 or More Access Lines in Utah, Not Subject to Sufficient Competition.

Except, after public notice and hearing, as ordered by the Commission upon finding that sufficient competition exists in a defined geographic area to waive one or more of the following standards and rely upon market operations to ensure adequate end user service quality, each incumbent telecommunications corporation with 30,000 or more access lines in Utah shall comply with the following service standards with respect to tariffed public telecommunications services. An incumbent telecommunications corporation subject to Rule 746-340-8 will be subject to 54-7-25 penalties for the failure to comply with any of these service standards for any time period greater than three consecutive months, unless the Commission determines, pursuant to a request for agency action by an interested person and proceedings thereon, that the corporation's failure(s) to comply with these standards warrant imposition of such penalties for a shorter time period.

A. Installations -- Excluding documented Allowed Service Disruption events listed in R746-340-1(B)(1), a telecommunications corporation shall:

1. install 90 percent of all new, transfer, and change orders within three business days or on the customer-requested due dates, whichever is later, on a wire center basis. Beginning July 2001, install 95 percent of all new, transfer, and change orders within three business days or on the customer-requested due dates, whichever is later, on a wire center basis;

2. allow no more than five held orders per 1,000 new, transfer and change orders at the end of any month on a statewide basis for all areas not previously exempted under this rule. Beginning January 1, 2002, allow no more than four held orders per 1,000 new, transfer and change orders at the end of any month on a statewide basis for all areas not previously exempted under this rule;

3. meet 90 percent of all new, transfer and change order installation commitments, excluding customer trouble reports within seven days of initial installation, on a wire center basis, unless the customer requests a later date; and

4. automatically credit $10 to a residential customer, $40 to a small business customer, for missing an installation commitment.

B. Repairs -- Excluding documented Allowed Service Disruption Events listed in R746-340-1(B)(1), a telecommunications corporation shall:

1. Repair 80 percent of all out-of-service troubles within one business day, on a wire center basis. Beginning July 1, 2001, repair 85 percent of all out-of-service troubles within one business day, on a wire center basis;

2. repair 90 percent of all troubles within two business days, on a wire center basis;

3. automatically credit $10 to a residential customer, $40 to a small business customer, for missing a repair commitment.

4. Trouble reports received after 4:00 p.m. Monday through Friday are deemed received at 8:00 a.m. on the following business day.

C. Billing Requirements -- Excluding documented Allowed Service Disruption events listed in R746-340-1(B)(1), a telecommunications corporation shall:

1. correct a billing error upon receiving a customer request by correcting the error on the customers account within one week.

2. Maintain and provide to the Division of Public Utilities upon request, evidence documenting its activities, the purposes, dates, volumes, and times of those activities in:

a. making billing corrections within one week, and

b. investigating to determine whether or how to make billing corrections.

D. Disconnection of Service Requirements -- Excluding documented Allowed Service Disruption Events listed in R746-340-1(B)(1), a telecommunications corporation shall:

1. disconnect a customer for nonpayment no earlier than the disconnect date listed on the telecommunications corporation's disconnect notice to the customer; and

2. maintain and provide to the Division of Public Utilities upon request, evidence documenting its activities and the dates of those activities when disconnecting customers no earlier than the disconnect dates specified on their disconnect notices; and disconnecting only those customers eligible to be disconnected.

E. Incoming Repair and Business Office Calls -- Excluding documented Allowed Service Disruption Events listed in R746-340-1(B)(1), a telecommunications corporation shall:

1. assure that incoming repair and business office calls experience no more than a 120-second time in queue on average;

2. beginning January 1, 2001 through July 7, 2001, assure that incoming repair and business office calls experience no more than a 45-second time in queue on average; and

3. beginning July 8, 2001, assure incoming repair and business office calls experience no more than a 35-second time in queue on average.

R746-340-9. Reporting Requirements For Compliance with R746-340-8 Standards.

A. Reporting Requirements -- A telecommunications corporation, subject to R746-340-8, shall separately document the specific cause, the duration, and the magnitude of each failure to comply with a R746-340-8 requirement. A telecommunications corporation shall provide quarterly service

quality monitoring reports covering the measures listed under R746-340-8. Monthly results will be recorded, summarized, and reported quarterly and on a wire-center basis as applicable. Wire-center specific data shall be treated as proprietary until 120 days after the close of the last month reflected in the report.

B. Monthly Results -- For each requirement, the reported monthly results shall measure outcomes both meeting and not meeting the R746-340-8 standards.

C. Audits of Service Outcomes or Complaints -- A telecommunications corporation shall cooperate in Division of Public Utilities' audits regarding its service outcomes or Commission complaints regarding those outcomes.

KEY: procedure, telecommunications, telephone utility regulation

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R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the

solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and

this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

1. Nonbusiness income means all income other than business income and shall be narrowly construed.

2. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

3. Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under G.1.a).

b) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See G.1.b).

c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

e) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

f) A schedule must be submitted with the return showing:

(1) the gross income from each class of income being allocated;

(2) the amount of each class of applicable expenses,

together with explanation or computations showing how amounts were arrived at;

(3) the total amount of the applicable expenses for each income class; and

(4) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

g) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

h) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

B. Definitions.

1. "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

2. "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

3. "Allocation" means the assignment of nonbusiness income to a particular state.

4. "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

C. Apportionment.

1. If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

2. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

D. Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

E. Taxable in Another State.

1. In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

2. When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

a) does not actually engage in business activity in that state, or

b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

3. When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

F. Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor,

see G. below, the payroll factor, see H. below, and the sales factor, see I. below, of the trade or business of the taxpayer. For exceptions see J. below.

G. Property Factor.

1. In General.

a) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

b) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

c) The property factor shall reflect the average value of property includable in the factor. Refer to G.6.

2. Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

3. Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

5. Valuation of Owned Property.

a) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

6. Valuation of Rented Property.

a) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See J.2. for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

b) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

c) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

d) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or

otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

e) Annual rent does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

f) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

7. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

a) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

b) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

c) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in G.6.a).

H. Payroll Factor.

1. The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

2. The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

3. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

a) The term "employee" means:

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

b) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(1) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

5. Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation

Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

6. Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

a) The employee's service is performed entirely within the state.

b) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's base of operations is in this state; or

(2) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

d) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

I. Sales Factor. In General.

1. Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

d) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

f) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

g) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See J.3.

h) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

i) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

2. Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under J.3.

3. Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

4. Sales of Tangible Personal Property in this State.

a) Gross receipts from the sales of tangible personal property (except sales to the United States government; see I.5.) are in this state:

(1) if the property is delivered or shipped to a purchaser

within this state regardless of the f.o.b. point or other conditions of sale; or

(2) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

e) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

f) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

g) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(1) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(2) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

5. Sales of Tangible Personal Property to United States Government in this state.

a) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

6. Sales Other than Sales of Tangible Personal Property in this State.

a) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

b) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(1) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(2) the sale, rental, leasing, or licensing or other use of real property;

(3) the rental, leasing, licensing or other use of intangible personal property; or

(4) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

c) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

d) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(1) the income producing activity is performed wholly within this state; or

(2) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

e) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross

receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

J. Special Rules:

1. Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

a) separate accounting;

b) the exclusion of any one or more of the factors;

c) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

2. Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

a) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

3. Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see I.1.a), and income from the sale, licensing or other use of intangible personal property, see I.6.b)(4).

(1) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(2) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

4. Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

5. Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

a. depreciation (see rule R865-6F-9),

b. depletion,

c. exploration and development expenses,

d. intangible drilling costs,

e. accounting methods and periods (see rule R865-6F-2), and

f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

a. installment sales (see rule R865-6F-15),

b. consolidated returns (see rule R865-6F-4),

c. liquidating dividends,

d. municipal bond interest,

e. capital loss deduction,

f. loss carry-overs and carry-backs, and

g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321, and 59-7-501.

A. When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long- term contracts from sources within this state is determined pursuant to this rule.

B. Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

1. Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

2. Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

C. Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Utah Code Ann. Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

3. The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

D. Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Utah Code Ann. Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

1. Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

2. Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For

example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Utah Code Ann. Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

3. The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

E. Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Utah Code Ann. Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

1. Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

2. If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

3. If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

4. The sales factor, except as noted above in subparagraphs 2. and 3., is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

F. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

G. The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

1. In the income year the contract is completed, the income (or loss) therefrom is determined.

2. The income (or loss) determined at Paragraph G.1. is apportioned to this state by the following method:

(a) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(b) each percentage determined in (a) is multiplied by the apportionment formula percentage for that particular year;

(c) these factors are totaled; and

(d) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

3. A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Paragraph G.4.

4. The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Corporations Exempt From The Franchise Tax Pursuant to Utah Code Ann. Section 59-7-105.

A. Corporations incorporated or qualified in Utah under

the Nonprofit Corporation Act are taxable unless a valid Utah corporation franchise exemption is obtained. A corporation must be engaged in or organized to engage in one of the exempt categories provided in the Utah law in order to be eligible for exemption from Utah corporation franchise tax. In some instances, Utah exempt provisions are the same as those contained in federal law. Corporations that obtain a valid Utah exempt ruling are not required to file Utah corporation franchise tax returns (Form TC-20) nor pay Utah corporation franchise taxes, except as noted in Paragraph B, of this rule.

B. Corporations which meet the requirements of Section 501(c), as amended, of the Internal Revenue Code are exempt from the franchise tax. However, if an exempt corporation becomes subject to federal income tax, it must make a full disclosure of the items and amounts which have become subject to federal tax for a redetermination of its taxable status for Utah corporation franchise tax purposes.

1. The federal exempt ruling is used as the basis for determining Utah exemption, provided a copy of the ruling is submitted with a written request for Utah corporation franchise tax exemption.

2. The Tax Commission replies in writing to the written request.

C. If Utah law provides for exemption but federal law does not, the Tax Commission makes an exception upon receipt of a written request from corporations such as:

1. Homeowner associations not organized for profit, which are organized to maintain or operate common areas or facilities. (Corporations such as time share, recreation property, and business property associations formed to maintain common areas are not exempt.)

2. Holding companies are generally exempt from Corporation Franchise Tax under the provisions of Utah Code Ann. Section 59-7-105(c). However, several conditions must be met before the exemption applies. These conditions are as follows.

(a) Each of its subsidiary corporations required by Utah Code Ann. Section 59-7-102 to pay tax for the privilege of exercising its corporate franchise or for the privilege of doing business in the state must make the returns required by Utah Code Ann. Title 59, Chapter 7. For purposes of the foregoing, a corporation is a subsidiary of a second corporation if such second corporation owns, either directly or indirectly, more than 50 percent of the outstanding stock of any class of stock of the subsidiary and is entitled to vote in the election of directors of the subsidiary.

(b) The activities of such corporation are limited so as to be only such as are incidental to the business of holding stock of other corporations for the purpose of controlling the management of affairs of such other corporations (the controlled corporation being referred to herein as subsidiary corporation). By way of illustration and not limitation, such activities may include the following:

(1) acquiring and holding shares, stocks, debentures, debenture stock, bonds, obligations, and securities issued by its subsidiary corporations;

(2) acquiring and holding stock and securities of another corporation for the purpose of acquiring control of such other corporation;

(3) charging its subsidiary corporations management fees for furnishing management, accounting, and other services;

(4) borrowing from and lending money to its subsidiary corporations, endorsing or otherwise guaranteeing obligations of its subsidiary corporations, and guaranteeing contractual or other performance obligations of its subsidiary corporations;

(5) having interlocking directors and officers between such corporation and its subsidiary corporations;

(6) monitoring and supervising the plans, methods, and operations of its subsidiary corporations;

(7) retaining and temporarily investing funds held for purposes incident to the management of affairs of its subsidiary corporations; provided, however, that such investments are handled in a manner so that any net income derived from investment of such funds is allocated so as to be included for purposes of the Utah corporation franchise tax in the income of the subsidiary corporations;

(8) the holding company may for its own use enter agreements concerning constructing, leasing, purchasing, holding, mortgaging or otherwise encumbering, and selling such real property as may be necessary or appropriate to the management of affairs of its subsidiary corporations; and

(9) employing persons and owning, leasing, or otherwise holding such personal property as may be necessary or appropriate to the management of affairs of its subsidiary corporations.

(c) The articles of association or incorporation of such corporation must limit the exercise of the corporation's franchise to those activities permitted under Paragraph C.2.b. of this rule.

(d) Unless permitted under Paragraph C.2 of this rule, any holding company claiming to be exempt from the Utah corporation franchise tax shall not carry on or undertake any business, undertakings, transactions, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commercial men, or agents; nor carry on or undertake any investment or insurance business, or any business of any kind.

(e) The exemption applies only during that portion of a corporation's taxable year when these conditions are met. During any portion of its taxable year when a corporation does not meet all of the requirements, the corporation is subject to the tax imposed by Utah Code Ann. Section 59-7-102 based on such corporation's net income during the nonexempt portion of its taxable year. If a corporation, exempt for all or a portion of a taxable year, loses its exemption for such year, it may again be exempt by remedying the defect or defects and once again complying with all of the conditions and requirements. However, the exemption thus reestablished does not apply until the first day of the corporation's taxable year following the reestablishment of the exemption.

(f) Proof of Exemption. In order to establish its exemption under Paragraph C, each corporation claiming exemption must file with the Tax Commission:

(1) an affidavit showing the character of the corporation, the purpose for which it is organized, the nature of its activities, all of its subsidiary corporations and its subsidiary corporations which are subject to the Utah corporate franchise tax; and

(2) a copy of its article of association or incorporation.

(i) The foregoing filing must be made by what would

otherwise be the due date of the corporation's franchise tax return for the first year for which exemption is claimed. When a corporation has established its right to exemption, it need not thereafter voluntarily make a return or any further showing with respect to its status unless it changes the character of its organization or operations from the purpose for which it is organized, or unless the Tax Commission requests the filing of returns or the furnishing of other information. Copies of supplemental or amended articles of association or incorporation should be forwarded promptly to the Tax Commission for study as to the effect upon exemption. The Tax Commission may, from time to time, require the corporation to file an affidavit, or a form which will reveal the corporation's current status.

(g) This rule is not intended to in any way limit the authority and power of the Tax Commission (pursuant to Utah Code Ann. Section 59-7-113) to distribute, apportion, or allocate gross income or deductions between or among the corporations specified in Utah Code Ann. Section 59-7-113, if the Tax Commission determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of Utah corporate franchise taxes or to clearly reflect the Utah taxable income of any of such corporations. If the Tax Commission determines, as part of its exercise of the foregoing power, that the deduction for an intercompany transfer is unreasonable in nature or amount, the Tax Commission may deny a deduction for the unreasonable portion in order to prevent evasion of Utah corporate franchise taxes or clearly reflect the Utah taxable income of the transfer corporation. Furthermore, this rule in no way prohibits the Tax Commission from determining if a holding company is conducting a unitary business with any or all of its subsidiaries for the purpose of determining the amount of net income attributable to Utah from the entire unitary business operations. Exercise by the Tax Commission of its authority and power contained in this paragraph is not evidence that the corporation has failed to meet all of the requirements of this section.

3. Insurance companies which are required to pay Utah insurance premium taxes are exempt from corporation franchise tax requirements. Insurance companies that are exempt from payment of Utah insurance premium taxes or who have qualified as a Utah Corporation, but have not commenced doing business in Utah, are subject to the corporation franchise tax requirements including the minimum tax provisions.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions:

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

2. "Business and nonbusiness income" are as defined in R865- 6F-8(A).

3. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

4. "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

5. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

6. "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

7. "Trucking company" means a corportion engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

8. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

9. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

1. In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

2. Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

E. The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid

within this state during the income year by the taxpayer for the production of business income.

1. With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

1. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

a) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

b) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

H. This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

1. owned or rented any real or personal property in this state;

2. made any pickups or deliveries within this state;

3. traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

4. made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-608.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes

architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-608 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-608.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-606, 59-10-603, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-606, 59-10-603, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Qualifying investment" means an investment in plant, equipment, or other depreciable property that is newly purchased or constructed.

2. "Nonretail capacity" means any position except those involved in selling directly to the public.

3. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

4. "Individuals who, at the time of employment" pursuant to Section 9-2-412, means individuals who, prior to being employed by the manufacturing business claiming the tax credit, were residents of the enterprise zone.

B. Qualifying investments must meet the following:

1. The plant, equipment, or other depreciable property for which the credit is being taken must be located within the boundaries of the enterprise zone.

2. An investment in plant, equipment, or other depreciable property does not qualify for the investment tax credit until the manufacturing concern is operational within the enterprise zone.

3. A purchase of an already existing manufacturing concern located in an enterprise zone does not qualify as an investment in plant, equipment, or other depreciable property.

4. A qualifying investment may include:

a) The investment in storage facilities to store manufactured goods, raw materials or other items used in the manufacturing process if the storage facility is located in the same enterprise zone as the manufacturing business for which the storage facility is being used.

b) The investment in the retail portion of a primarily manufacturing business if the retail portion is located within the same enterprise zone as the manufacturing portion for which the qualifying investment is being made.

C. The replacement of existing assets does not qualify for the investment tax credit.

D. A business existing in an enterprise zone on the date of its designation shall use the higher of the following in determining its base number of employees to be used in calculating new full-time positions as indicated in Section 9-2-413:

1. The number of employees shall be calculated based on the average number of employees reported to the Department of Employment Security for the four quarters prior to the county's designation as an enterprise zone; or

2. The number of full-time positions on the date of the county's designation as an enterprise zone.

E. Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

F. Records and supporting documentation shall be

maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

G. Employees must be employed for six months prior to December 31, 1994 to be eligible for the tax credit allowed in Section 9-2-413.

H. If a county that has been designated an enterprise zone loses that designation prior to the expiration of the period for which it was so designated, no tax credits other than carryforward tax credits earned in a prior year in which the county was a designated enterprise zone will be allowed to any business in that county.

I. Enterprise zone credits claimed on returns with an original due date prior to July 1, 1993, may be carried forward for five years. Enterprise zone credits claimed on returns with an original due date on or after July 1, 1993, may be carried forward for three years.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Car-mile" means a movement of a unit of car equipment a distance of one mile.

4. "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

5. "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

8. "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

9. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

10. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

11. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-08(H),and the sales factor in accordance with R865-6F- 8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

1. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

2. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

E. The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

1. With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

3. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income,

except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

1. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

a) Intrastate: all receipts from shipments that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

3. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

a) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-7-106.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

2. "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

B. When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in

the business shall be included in the denominator of the property factor.

E. All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

1. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

a) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

b) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

c) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(i) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(ii) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

F. The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

G. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(J)(3).

H. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

2. Except as provided in H.2.b), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

a) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

b) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not

upon the basis of the circulation factor provided by H.2.a). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

c) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

2. "Borrower or credit card holder located in this state" means:

a) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

b) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

3. "Commercial domicile" means:

a) the place from which the trade or business is principally managed and directed; or

b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

4. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

5. "Credit card" means a credit, travel, or entertainment card.

6. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

7. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

8. "Financial institution" means:

a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections21 et seq.;

c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

d) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

e) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

f) any agency or branch of a foreign depository as defined in 12 U.S.C. Section3101;

g) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

h) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in A.8.a) through A.8.g), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

i) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(1) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(2) gross income from incidental or occasional transactions shall be disregarded;

j) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a

securities dealer, that derives more than 50 percent of its gross income from activities that a person described in A.8.b) through A.8.g) and A.8.i) is authorized to transact.

(1) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(2) The Tax Commission is authorized to exclude any person from the application of A.8.j) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in A.8.b) through A.8.g) and A.8.i).

9. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

a) Gross rents includes:

(1) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(3) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

b) Gross rents does not include:

(1) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(2) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(3) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(4) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

10. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

a) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

b) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

11. "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

12. "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

13. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

14. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

15. "Principal base of operations" means:

a) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

b) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(1) starts his work and to which he customarily returns in order to receive instructions from his employer;

(2) communicates with his customers or other persons; or

(3) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

16. a) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(1) on which the taxpayer may claim depreciation for federal income tax purposes; or

(2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

b) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

17. "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

18. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

19. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

20. "Taxable" means:

a) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

b) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

21. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

B. Apportionment and Allocation.

1. A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor described in C., property factor described in D., and payroll factor described in E., and dividing that sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but not merely because its numerator is zero.

3. Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

4. If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on Tax Commission rule R865-6f-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

C. Receipts Factor.

1. In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

3. Receipts from the lease of tangible personal property.

a) Except as described in C.4., the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(2) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

4. Interest from loans secured by real property.

a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

11. Loan servicing fees.

a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

c) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

13. Receipts from investment assets and activities and trading assets and activities.

a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

b) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

c) The receipts factor shall include the following investment and trading assets and activities:

(1) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(2) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

d) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in C.13. that are attributable to this state.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(3) The amount of interest, dividends, gains, and other

income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.d)(1) and C.13.d)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(4) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in D.3. and D.4.

e) In lieu of using the method set forth in C.13.d), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.e)(1) or C.13.e)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2)by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

f) If the taxpayer elects or is required by the Tax Commission to use the method set forth in C.13.e), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

g) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

14. All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(I) and (J).

15. Attribution of certain receipts to commercial domicile.

a) Except as provided in C.15.b), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

b) (1) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in C.1. through C.14. rather than being attributed to the commercial domicile of the financial institution as provided in C.15.a).

(2) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under C.1. through C.14. may not be included in the numerator of this state's receipts factor.

D. Property Factor.

1. In General.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

2. Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.

a) For taxpayers that do not elect to include the property

described in D.7. through D.9. within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor:

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

a) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

b) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

5. Average value of real property and tangible personal property rented to the taxpayer.

a) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

b) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

6. Location of real property and tangible personal property owned or rented to the taxpayer.

a) Except as described in D.6.b), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(2) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

7. Location of Loans.

a) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

b) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(1) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(2) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(3) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

c) The presumption of proper assignment of a loan provided in D.7.b) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(1) the taxpayer had a regular place of business within this state at the time the loan was made; and

(2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

d) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

e) To determine the state in which the preponderance of

substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(1) Solicitation. Solicitation is either active or passive.

(a) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(b) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(2) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(3) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(4) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(a) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(b) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(5) Administration. Administration is the process of managing the account.

(a) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(b) The activity is located at the regular place of business that oversees this activity.

8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of D.7.

9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

10. Each taxpayer shall make an initial election on whether to include the property described in D.7. through D.9. within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

E. Payroll factor.

1. In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

2. Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

a) The employee's services are performed entirely within this state.

b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's principal base of operations is within this state;

(2) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(3) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

F. This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Call" means a specific telecommunications transmission as described in A.6.

2. "Channel termination point" means the point at which information can enter or leave the telecommunications network.

3. "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

4. "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

5. "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

6. "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

7. "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

B. Apportionment and Allocation.

1. A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with Tax Commission rule R865-6F-8(G), the payroll factor in accordance with rule R865-6F-8(H) and the sales factor in accordance with rule R865-6F-8(I).

C. Property Factor.

1. Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(G).

D. Sales Factor Numerator.

1. The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

a) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

b) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

c) receipts derived from charges for individual toll calls that originate and terminate in Utah;

d) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

e) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

2. Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

a) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

b) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

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.

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, historic preservation, trucking industries

March 16, 1999

Notice of Continuation April 10, 1997

9-2-401 through 9-2-414 16-10a-1501 through 16-10a-1533 53B-8a-112 59-6-102 59-7-102 59-7-104 through 59-7-106 59-7-108 59-7-109 59-7-110 59-7-112 59-7-302 through 59-7-321 59-7-402 59-7-403 59-7-501 59-7-502 59-7-505 59-7-601 through 59-7-606 59-7-608 59-7-701 59-7-703 59-10-603 59-13-202

R865. Tax Commission, Auditing.
R865-21U. Use Tax.
R865-21U-1. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.

A. The use tax is an excise tax on the storage, use, or other consumption of tangible personal property in Utah, the sale of which was not subject to Utah sales tax. The use tax also applies to amounts paid or charged for repair services and renovation services performed on tangible personal property and installation charges in connection with installing tangible personal property to other tangible personal property. The charges for these services are taxable if the property is stored, used, or otherwise consumed in Utah after the services are performed, whether the services are performed outside Utah or if a retailer was called to this state to perform the services.

B. In general, the use tax applies to the purchase of tangible personal property for consumption if the sale or rental of the property or the services performed on the property would have been subject to the sales tax if purchased within the state. The primary purpose of the use tax is to protect the merchants of Utah from discrimination arising from the inability of the state of Utah to impose a sales tax on sales made to residents of this state in interstate commerce or by merchants in other states.

R865-21U-2. Rules Common to Both Sales and Use Taxes Pursuant to Utah Code Ann. Section 59-12-118.

A. The use tax is a complement to the sales tax and the rules promulgated are common to both taxes.

R865-21U-3. Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107.

A. Retailers, as defined by the act, are responsible for the collection of the tax from the purchaser and should give the purchaser a receipt thereof.

B. An example of a retailer would include a manufacturer's representative or a magazine-subscription solicitor located within this state and obtaining orders which are in turn shipped by the manufacturer or publisher to the customer in Utah.

C. A retailer is engaged in business in this state if any activity is conducted by him or his agents, as defined above, with the object of gain, benefit, or advantage--either direct or indirect--whether qualified or admitted to do business or not.

D. When tangible personal property is sold in interstate commerce for use or consumption in this state and the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and delivery is made in this state, the sale is subject to use tax. The sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or produced by the seller at a point outside this state and shipped directly to the purchaser from the point of origin. The seller is required to report all such transactions and collect and remit to this state the use tax on all taxable sales. If these conditions are met, it is immaterial that the contract of sale is closed by acceptance outside the state or that the contract is made before the property is brought into the state.

E. Delivery takes place in this state when physical possession of the tangible personal property is actually transferred to the buyer within this state. Also, when the tangible personal property is placed in the mail at a point outside this state and directed to the buyer in this state or placed on board a carrier at a point outside this state (or otherwise) and directed to the buyer in this state, delivery takes place in Utah.

R865-21U-6. Liability of Purchasers and Receipt For Payment to Retailers Pursuant to Utah Code Ann. Section 59-12-107.

A. Purchasers of tangible personal property--the storage, use, or other consumption of which is subject to tax--must account for the tax liability by paying the tax:

1. to the retailer from whom the property was purchased if such retailer holds a certificate of registration under the use tax act. When property is purchased from a registered retailer, the purchaser is not relieved from the tax liability unless a receipt is obtained from such retailer. This receipt need not be in any particular form but must show the name and registration number of the retailer, the name of the purchaser, the date of the sale, description of the property or reference to the sales invoice, the purchase price, and amount of tax. A sales invoice containing the above information, together with evidence of payment of such invoice, will constitute a receipt. Payment of the tax to a registered retailer under these conditions relieves the purchaser of any further liability.

2. directly to the Tax Commission if the retailer from whom the property was purchased does not hold a certificate of registration. Under these circumstances, one of the following procedures must be followed:

(a) if the purchases are made by a business required by Section 59-12-106 to hold or obtain a sales tax license or a use tax certificate of registration, the tax is paid on a sales and use tax return;

(b) if the purchases are made by any person as defined in Utah Code Ann. Section 59-12-102, who has no sales tax collection responsibility, and if the annual taxes due may be reasonably expected to exceed $400, such person must apply for registration as a consumer and pay the tax using a quarterly use tax return; or

(c) if the purchases are made by an individual who has no sales tax collection responsibility and the annual use tax liability is less than $400, the tax is remitted using the individual income tax return filed each year. The tax is computed by using the rates provided in the income tax instructions for the address of the consumer as shown on the individual income tax form. If a consumer files as a part-year resident, the latest address in Utah is the basis for the use tax rate to report purchases subject to use tax made during the Utah residency period. If the purchaser does not meet individual income tax filing requirements, the purchaser obtains an income tax filing form and reports and pays the use tax on this form. A statement to the effect that no income tax is due and that the return is submitted for payment of use tax only shall be included with this form. An individual required to report use tax under this subsection satisfies all Tax Commission filing requirements by reporting and remitting the tax due within the time allowed to timely file his individual income tax return.

R865-21U-12. Storage Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104(34).

A. "Storage" means and includes any storing, keeping, retention of or exercise of dominion, or control over tangible personal property within Utah. Storage does not include purchases of tangible personal property or personal property which remains in the interstate commerce channel. Also, no tax applies if the property is brought into Utah for some purpose other than storage, use, or consumption in Utah. For example, steel purchased out of state and brought into Utah for fabrication would be exempt provided that the steel was purchased for intended use in an out-of-state contract and retained its identity through the fabrication process and eventually was used in the intended out-of-state contract. Steel purchased in bulk quantities and placed in a general inventory and subsequently fabricated and used outside of the state would be subject to the Utah tax since this would constitute a purchase for storage in Utah. If the materials are subsequently taken out of state and incorporated into and become real property in a state which will not allow credit for tax paid to Utah, the purchaser may request a refund of the tax previously paid.

R865-21U-15. Automobiles, Construction Equipment, and Other Merchandise Purchased From Out-Of-State Vendors Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.

A. Automobiles, construction equipment, and other merchandise purchased by Utah residents from out-of-state dealers are subject to Utah use tax even if incidental first use occurs outside the state. For example, a salesman whose residence is in Utah has a territory which extends into other states. He purchases a car while out of state and continues his itinerary. Upon return to Utah, the car is subject to the registration laws of this state, together with a use tax, if applicable, to be paid at time of registration. If tax was paid in another state, credit shall be allowed for the tax paid in accordance with Utah Code Ann. Section 59-12-104.

R865-21U-16. Property Sold or Used In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-107.

A. The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.

B. The fact that tangible personal property is used in this state in interstate or foreign commerce following its storage in this state does not exempt the storage of the property from the tax. The fact that tangible personal property is used in this state in interstate or foreign commerce does not exempt the use of the property from the tax.

KEY: taxation, user tax
August 20, 1996 **59-12-103**
Notice of Continuation March 27, 2001 **59-12-107**
59-12-104
59-12-118

R867. Tax Commission, Collections.
R867-2B. Delinquent Tax Collection.
R867-2B-1. Collection of Penalty Pursuant to Utah Code Ann. Section 59-1-302.

A. The Tax Commission may impose a lien upon the real and personal property of an officer or director of a corporation liable to pay under Section 59-1-302.

B. The statute of limitations for imposing liens under A. is three years from the date of the penalty assessment.

R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702.

A. Assessments made pursuant to Title 59, Chapter 19, Illegal Drug Stamp Act, shall meet the grounds for the jeopardy provisions under Sections 59-1-701 and 59-1-702 due to the nature of the tax and the likelihood that assets may be seized and sold by other creditors.

R867-2B-3. Sale of Seized Property Pursuant to Utah Code Ann. Section 59-1-703.

A. The Commission must approve all sales of seized property sold, pursuant to Section 59-1-703(8), prior to the Commission's final decision on the appeal.

B. The taxpayer will be notified in writing of the intent to sell the seized property at least ten days prior to the sale except when the seized property is perishable. Perishable property may be sold immediately.

C. Expenses of retaining the seized property will be determined by taking into account such things as the appraised value of the property, the storage costs for the projected appeal period, conservation, depreciation, and maintenance.

D. A taxpayer may stop a sale of seized property by posting a bond with the Tax Commission, equal to the appraised value of the property, within three days of the notice of sale.

R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code Ann. Section 59-19-104.

A. Drug stamps issued as evidence of payment of the tax imposed on marihuana and controlled substances shall be affixed and displayed in a reasonably prominent position on the container of the marihuana or controlled substance for which they were issued.

1. For purposes of this rule, "container" means any substance or material that encloses or encircles, but is not consumed with, the marihuana or controlled substance.

2. If more than one container encloses or encircles the marihuana or controlled substance, the stamps shall be affixed to and displayed on the container closest to the marihuana or controlled substance.

B. If the marihuana or controlled substance is not encircled or enclosed in a container, the drug stamp shall be kept in reasonable proximity to the marihuana or controlled substance for which it was issued.

KEY: taxation, controlled substances, seizure of property*, drug stamps*
March 21, 1997 **59-1-302**
Notice of Continuation March 27, 2001 **59-1-706**
59-1-701
59-1-702
59-1-703
59-1-707
59-19-104
59-19-105
59-19-107

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, 2000 edition and amendments which appear, November 1, 2000 and, December 1, 2000, January 1, 2001, as printed by the Regulations Management Corporation Service, is incorporated by reference, except for Parts 391.11(b)(1), 391.49, 395.1(k), 395.1(l), 395.1(m) and 395.1(n). 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 involved in interstate commerce, transporting placarded amounts of hazardous materials, or 16 or more passengers including the driver, shall be at least 21 years old.

R909-1-2. Insurance for Private Intrastate/Interstate Motor Carriers.

A. Definitions: Private motor carriers means a motor carrier which solely transports their own product and does not haul for any other person or motor carrier.

B. Private motor carriers shall have an MCS-90, MCS-90B, MCS-82 or MCS-828 on file at the principal place of business with a minimum amount of $750,000 liability.

KEY: trucks, transportation safety
March 20, 2001 72-9-103
Notice of Continuation March 31, 1997 72-9-104

R909. Transportation, Motor Carrier.

R909-4. Safety Regulations for Tow Truck (Wrecker) Operations - Tow Truck Requirements, Equipment and Operation.

R909-4-1. Authority.

This rule is enacted under the authority of Section 72-9-602.

R909-4-2. Applicability.

All tow trucks and employees must comply and observe all rules, regulations, and traffic laws as prescribed by State Law and 49 CFR 350 - 399 (1996 Edition) hereby incorporated by reference.

R909-4-3. Definitions.

In addition to definitions found in CFR Title 49 Parts 350-399, the following definitions are provided:

(1) "Tow Truck Service" means the transportation upon the public streets and highways of the State of Utah of damaged, disabled, or abandoned vehicles together with personal effects and/or cargo, towing only. Wrecker service, tow car service, and garage tow truck service are synonymous and shall be termed "Tow Truck Service".

(2) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, or impounded vehicles from a highway or other place by means of a crane, hoist, tow bar, tow line, dolly, tilt bed, or other means.

(3) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle.

R909-4-4. Insurance.

All tow trucks will be required to carry at least $750,000 of insurance. Coverage will remain in effect at all times while company is doing business in the State of Utah.

R909-4-5. Inspection and Certification.

(1) All tow trucks shall be inspected and certified by the Utah Department of Transportation.

(2) A certificate of inspection shall be completed and a sticker issued, which shall be attached to the vehicle and displayed during the time designated by the Department.

(3) Evidence of required insurance coverage shall be shown to the inspector prior to certification.

(4) A periodic inspection, at least every two years, will be made by the Department.

R909-4-8. Classifications.

(1) Class A - Flatbed (Rollback) Truck

(A) Vehicle shall have a minimum manufacturer's GVWR of 10,000 pounds with dual rear wheels.

(B) 50 feet of 3/8 cable and a single winch.

(2) Class B - Light Duty Tow Truck

(A) Tow trucks shall have a minimum manufacturer's GVWR of 10,000 pounds.

(B) Boom capacity of not less than four tons.

(C) Winch pulling capacity of not less than four tons.

(D) All other requirements as specified under Section 9. minimum equipment requirements.

(3) Class C - Medium Duty Tow Truck.

(A) Tow trucks shall have a minimum manufacturer's GVWR of 20,001 pounds.

(B) Boom capacity of not less than ten tons.

(C) Winch pulling capacity of not less than ten tons.

(D) 200 feet or more of 1/2 inch cable or larger on one spool.

(E) Cradle tow plate or tow sling to pick up vehicles. Cradle or tow plate to be equipped with safety chain to the boom.

(F) All other requirements as specified under minimum equipment requirements.

(4) Class D - Heavy Duty Tow Truck

(A) Tow trucks shall have a minimum manufacturer's GVWR of 26,001 pounds with a tandem axle.

(B) Boom capacity of not less than 25 tons.

(C) Winch pulling capacity of not less than 25 tons.

(D) 150 feet or more of 5/8 inch cable or larger on one spool.

(E) Pintle hitch.

(F) Double boom, so constructed to permit splintering or a large single boom of not less than 30 tons. Each boom to operate independently or jointly.

(G) Auxiliary air brake lines and hoses that may be connected with bus, tractor, trailer, or other towed vehicle when required as a matter of public safety.

(H) All other requirements as specified under Section 9. minimum equipment requirements.

R909-4-9. Minimum Equipment Requirements - (by class).

(1) FLATBED TRUCKS - (Class A)

(A) One 10 B: C fire extinguisher

(B) Three emergency reflective Triangles

(C) Tie down chains or straps

(D) Universal Jack

(E) Universal Lug wrench or equivalent

(F) Two wheel chock blocks

(G) Broom/Scoop shovel

(H) Debris container - minimum five gallons.

(I) Four foot prybar

(J) Tool kit with wrenches/cable cutters

(K) Portable lights - if truck has tow device

(L) Rotating amber warning light system

(M) Heavy-duty jumper cables

(N) Five gallon absorbent material

(2) TOW TRUCKS - (Class B)

(A) One 10 B: C fire extinguisher

(B) Three emergency reflective Triangles

(C) (Two) ten foot chains.

(D) Door and Steering Wheel Ties.

(E) Universal Jack

(F) Universal Lug wrench or equivalent

(G) Two wheel chock blocks

(H) Broom/Scoop shovel

(I) Debris container - minimum five gallons.

(J) Four foot prybar

(K) Tool kit with wrenches/cable cutters

(L) Portable lights.

(M) Dollies
(N) Rotating amber warning light system
(O) Heavy duty jumper cables
(P) (Two) six foot hardwood four x four's
(Q) Five gallon absorbent material
(3) MEDIUM AND HEAVY DUTY TRUCKS - (Class C and D)
(A) (One) Ten B: C fire extinguisher
(B) Three emergency reflective Triangles
(C) (Two) Ten foot chains.
(D) Door and Steering Wheel Ties.
(E) Broom/Scoop shovel
(F) Four foot prybar
(G) Tool kit with wrenches/cable cutters
(H) Portable lights
(I) Rotating amber warning light system.

R909-4-10. Authorized Service.

(1) Class A and B will not exceed the manufacturer rating of the tow truck, tire/axle rating and in no case exceed a laden of 16,000 pounds.

(2) Class C will not exceed the manufacturer rating of the tow truck, tire/axle rating and in no case exceed a laden of 50,000 pounds.

R909-4-11. Maximum Towing and Storage Rates.

(1) $80 per hour for towing Class A and B Vehicles;

(2) $146 per hour for towing Class C vehicles in excess of 10,000 pounds GVWR;

(3) $182 per hour for towing Class D vehicles in excess of 26,000 pounds GVWR;

(4) $10 maximum per day, per unit, for outside storage of cars, pickups, and smaller vehicle;

(5) $16 maximum per day, per unit, for inside storage of cars, pickups, and smaller vehicles;

(6) $25 maximum per day, per unit, for outside storage of semi or trailers;

(7) $50 maximum per day, per unit, for inside storage of semi or trailers.

KEY: safety regulation, trucks, towing
February 27, 1998 **72-9-602**
72-9-603

R909. Transportation, Motor Carrier.

R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.

R909-75-1. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, of the October 1, 2000, edition as printed in the Regulations Management Corporation Service, are incorporated by reference. In addition, amendments to the same edition, which appear November 1, 2000, December 1, 2000, and January 1, 2001, are incorporated by reference within this rule. This applies to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulation

March 20, 2001 72-9-103

Notice of Continuation April 22, 1997 72-9-104

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-901. Authority for Food Stamps and Applicable Rules.

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: http://www.fns.usda.gov/fsp/. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available at all Department offices. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted in that rule.

R986-900-902. Options and Waivers.

The Department administers the food stamp program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to adopt a standard utility allowance for utilities rather than allow the actual utility expense as a deduction from income when determining eligibility for food stamps. The standard utility allowance is updated annually and is available upon request from the Department.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designed as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) If a client fails to appear for the scheduled face-to-face interview required by 7 CFR 273.2 (e)(3), the Department is not required to attempt to schedule another interview unless the client contacts the Department and requests another interview. If the client misses two scheduled interviews and does not express an interest in pursing the application, the application can be denied without waiting until the 30th day as required by 7 CFR 273(g)(3).

(c) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.

(d) The Department is not required to conduct a face-to-face interview for each recertification period as required by 7 CFR 273.14(b)(3)(i), provided that at least one face-to-face interview, in conjunction with recertification, is conducted each year.

(e) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(f) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(g) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(h) FEP and FEPTP clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.

(i) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(j) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

KEY: food stamps, public assistance
March 20, 2001 **35A-3-103**