DMHF Rules Matrix 7-20-23

Rule Summary	Bulletin Publication	Effective
R414-42 Telehealth (Five-Year Review); The Department will continue this rule because it sets forth coverage, limitations, and reimbursement for telehealth services.	**7-1-23**	**6-14-23**
R414-8 Electronic Personal Medical Records for the Medicaid Program; The purpose of this change is to update and clarify the rule text as needed. This amendment, therefore, updates and clarifies terms and entities in the text. It also makes other technical and structural changes. Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department of Health and Human Services' statute.	**7-1-23**	**8-7-23**
R414-12 Laboratory Services; The purpose of this change is to update and clarify the rule text as needed. This amendment, therefore, updates names, terms, and entities in the text. It also makes other technical and structural changes. Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department of Health and Human Services' statute.	**7-1-23**	**8-7-23**
R414-60 Medicaid Policy for Pharmacy Program; The purpose of this change is to update and clarify the rule text as needed. This amendment, therefore, updates names, terms, and entities in the text. It also makes other technical and structural changes. Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department of Health and Human Services' statute.	**7-15-23**	**8-21-23**
R414-1-31 Withholding of Payments; In accordance with the Social Security Act and False Claims Act implementation, this amendment requires providers to establish written policies for employees that spell out administrative remedies for false claims and statements, and requires providers to comply with state laws pertaining to penalties, whistleblower protections, and written policies for preventing and detecting fraud, waste, and abuse.	**8-1-23**	**9-7-23**
R414-505 Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program; The purpose of this change is to update and clarify the rule text as needed. This amendment, therefore, updates names, terms, and entities in the text. It also makes other technical and structural changes. Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department of Health and Human Services' statute.	**8-1-23**	**9-7-23**

The public may access proposed rules published in the State Bulletin at https://rules.utah.gov/publications/utah-state-bull/

State of Utah
Administrative Rule Analysis
Revised May 2023

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Title No. - Rule No.		
Rule Number:	**R414-42**	**Filing ID: Office Use Only**
Effective Date:	**Office Use Only**	

Agency Information

1. Department:	Department of Health and Human Services	
Agency:	Division of Integrated Healthcare	
Room number:		
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	**Phone:**	**Email:**
Craig Devashrayee	(801) 538-6641	cdevashrayee@utah.gov
Jonah Shaw	(385) 310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R414-42. Telehealth.
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26B-3-108 requires the Department to implement the Medicaid program through administrative rules, and Section 26B-1-213 grants the Department the authority to adopt, amend, or rescind these rules.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department did not receive any written comments regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department will continue this rule because it sets forth coverage, limitations, and reimbursement for telehealth services. The Department will file an amendment to update citations for recodification purposes.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*.			
Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	Click or tap to enter a date.
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or a nonsubstantive change.			

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-42. Telehealth.
R414-42-1. Introduction and Authority.

This rule outlines access requirements, coverage, limitations, and reimbursement for telehealth services. This rule is authorized by Section 26-18-13.

R414-42-2. Definitions.

(1) "Telehealth services" means the transmission of health-related services or information through the use of electronic communication or information technology.

(2) "Teledentistry" means the use of information technology and telecommunications for dental care, consultation, and education.

(3) "Telepsychiatric consultation" means a consultation between a licensed provider and a board-certified psychiatrist that utilizes:

(a) the health records of the member, provided from the member or the referring provider; and

(b) a written, evidence-based member questionnaire.

(4) "Authorized provider" means a provider that signs a provider agreement with the Utah Medicaid Program, in which the provider agrees to abide by all state and federal laws related to the Medicaid program.

(5) "Distant site" means the physical location of a licensed provider that delivers health care services via a telecommunication system.

(6) "Originating site" means the physical location of a member at the time the service is being furnished via a telecommunication system.

(7) "Synchronous interaction" means real-time communication through interactive technology that enables a provider at a distant site and a member at an originating site to interact simultaneously through two-way audio or video transmission.

R414-42-3. Covered Services.

A licensed provider may deliver services via synchronous telehealth, as clinically appropriate. Services include consultation services, evaluation and management services, teledentistry services, mental health services, substance use disorder services, and telepsychiatric consultations.

R414-42-4. Limitations.

(1) Telehealth services must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, to ensure that all patient communications and records, including recordings of telehealth encounters, are secure and remain confidential. The provider is responsible to ensure the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) A provider must comply with the Utah Health Information Network (UHIN) standards for telehealth. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) The originating site receives no reimbursement for the use of telehealth services.

(4) Medicaid does not cover services via telehealth which are not otherwise covered.

R414-42-5. Reimbursement of Services.

The Department pays the lesser of the amount billed or the rate on the fee schedule. A provider may not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: September 22, 2020
Notice of Continuation: July 2, 2018
Authorizing, and Implemented or Interpreted Law: 26-18-13

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Title No. - Rule No. - Section No.		
Rule or Section Number:	**R414-8**	**Filing ID: Office Use Only**

Agency Information

Department of Health	Department of Health and Human Services	
Division of Medicaid and Health Financing	Division of Integrated Healthcare	
Cannon Health Building	Cannon Health Building	
288 North 1460 West	288 North 1460 West	
Salt Lake City, UT 84116	Salt Lake City, UT 84116	
PO Box 143102	PO Box 143102	
Salt Lake City, UT 84114-3102	Salt Lake City, UT 84114-3102	
Contact person(s):		
Phone:	**Phone:**	**Email:**
Craig Devashrayee	(801) 538-6641	cdevashrayee@utah.gov
Jonah Shaw	(385) 310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R414-8. Electronic Personal Medical Records for the Medicaid Program.

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

The purpose of this change is to update and clarify the rule text as needed.

4. Summary of the new rule or change:

This amendment updates and clarifies terms and entities in the text. It also makes other technical changes.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid Program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2024**	**FY2025**	**FY2026**

State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis. Businesses will see no fiscal impact with these minor changes and technical updates.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26B-1-213	Section 26B-3-902	Section 26B-3-108

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables)**:**

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/31/2023

B) A public hearing (optional) will be held:

Date (mm/dd/yyyy)**:**	**Time** (hh:mm AM/PM)**:**	**Place** (physical address or URL)**:**

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

9. This rule change MAY become effective on:	08/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	06/15/2023

R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.
R414-8. Electronic Personal Medical Records for the Medicaid Program.
R414-8-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26B-[~~1~~8]3-[~~3~~]108[~~, as last amended by Laws of Utah 2012, Chapters 28 and 242~~].

R414-8-2. Purpose.

This rule establishes requirements for enrolling a Medicaid member[~~beneficiaries~~] in the electronic exchange of clinical health information unless the individual opts out.

R414-8-3. Definitions.

[~~These definitions apply to Rule R414-8:~~]

(1) "Medicaid [~~beneficiaries~~]member" means an individual[~~s~~] who receives assistance through any of the following programs:

(a) Medicaid;

[~~(b) Primary Care Network;~~]

([~~e~~]b) Utah's Premium Partnership for Health Insurance (UPP);

([~~d~~]c) Baby Your Baby; and

([~~e~~]d) Cost sharing programs that include Qualified Medicare Beneficiary, [~~(QMB),~~]Specified Low-Income Medicare Beneficiary, [~~(SLMB),~~]and Qualified Individual[~~ (QI)~~].

[~~(2) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.~~]

(2) "Program website" means the website for the Department of Health and Human Services Division of Integrated Healthcare, and the UPP website.

[~~(3) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, Utah's Premium Partnership for Health Insurance, and Primary Care Network websites.~~]

R414-8-4. Enrollment Notification.

(1) [~~Prior to~~]Before the enrollment process in the Clinical Health Information Exchange ([~~e~~]CHIE), the Department [~~will~~]provides [~~N~~]notice of [~~I~~]intent to a Medicaid member[~~beneficiaries~~] to enroll in [~~e~~]CHIE and includes the individual's right [~~of individuals~~]to opt out.

(2) The Department [~~will~~]provides additional education regarding the individual's right to opt out on the program websites.

R414-8-5. Enrollment Process.

(1) The Department [~~will~~]provides [~~e~~]CHIE an enrollment file of [~~all~~]Medicaid beneficiaries.

(2) The enrollment file [~~will~~]contains the succeeding month's Medicaid enrollment.

(3) [~~e~~]CHIE [~~will~~]enrolls Medicaid beneficiaries on the first day of the succeeding month.

(4) [~~Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.~~]The technical specifications published by UHIN and the Department's operating agreement with CHIE include detailed submission procedures and guidelines, including required data elements.

(5) The Department [~~will~~]uses a secure format to transfer any enrollment files to [~~e~~]CHIE.

R414-8-6. Exemptions.

[~~(1)~~]An individual's previous consent status in [~~e~~]CHIE [~~will be~~]is honored by [~~e~~]CHIE and is[~~ will~~] not [~~be~~]overridden by the Medicaid enrollment file.

KEY: Medicaid, [e]CHIE
Date of Last Change: 2023[~~September 1, 2012~~]
Notice of Continuation: July 26, 2022
Authorizing, and Implemented or Interpreted Law: [~~26-1-5~~]26B-1-213; 26B-[~~18~~]3-[~~3~~]108; 26B-3-902

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Title No. - Rule No. - Section No.		
Rule or Section Number:	**R414-12**	**Filing ID: Office Use Only**

Agency Information

1. Department:	Department of Health and Human Services	
Agency:	Division of Integrated Healthcare	
Room number:		
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	**Phone:**	**Email:**
Craig Devashrayee	(801) 538-6641	cdevashrayee@utah.gov
Jonah Shaw	(385) 310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R414-12. Laboratory Services.

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

The purpose of this change is to update and clarify the rule text as needed. Additionally, this rule updates the authorizing citations following the 2023 Legislative Session recodification of the Department of Health and Human Services' statute.

4. Summary of the new rule or change:

This amendment updates names, terms, and entities in the text. It also makes other technical and structural changes. Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department of Health and Human Services' statute.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26B-1-213	Section 26B-3-108	

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables)**:**

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*)**:**

Official Title of Materials Incorporated (from title page)	
Publisher	

Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:		07/31/2023
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy)**:**	**Time** (hh:mm AM/PM)**:**	**Place** (physical address or URL)**:**
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	08/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	06/15/2023

R414. Health and Human Services, Health Care Financing, Finance Policy.
R414-12. Laboratory Services.
R414-12-1. [~~Introduction~~]Purpose and Authority.

(1) Laboratory services provide a scope of services to meet the basic medical needs of eligible Medicaid members.
(2) Laboratory services are a mandatory Medicaid service authorized by Title XIX of the Social Security Act.
(3) Sections 26B-1-213 and 26B-3-108 authorize this rule.

R414-12-2. Definitions.

(1) "COT" means chronic opioid therapy.
(2) "SUD" means substance use disorder.
(3) "Presumptive and qualitative drug testing" means testing used to determine the presence or absence of drugs or drug classes in a urine sample, with results expressed as negative, positive, or as a numerical result, and includes competitive immunoassays and thin layer chromatography.
(4) "Definitive quantitative confirmation" means to identify specific medications, illicit substances, and metabolites, which report the results of analytes absent or present typically in nanogram per milliliter concentrations. Definitive methods include gas chromatography-mass spectrometry [~~(GC-MS)~~]and lethal concentration-tandem mass spectrometry testing methods[~~(LC-MS/MS)~~].

R414-12-3. Eligibility Requirements.

Laboratory services are available to each eligible Medicaid member.

R414-12-4. Program Access Requirements.

An eligible Medicaid member may obtain laboratory services from any Utah Medicaid provider.

R414-12-5. Service Coverage and Limitations.

(1) Medicaid covers urine drug testing [~~when~~]if medically necessary for COT or SUD as follows:
(a) annual quantity limits of 60 presumptive tests and 16 definitive tests; and
(b) daily quantity limits of one presumptive test and one definitive test.
(2) Medicaid evaluates quantity limit exceptions on a case-by-case basis.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: May 1, 2021
Authorizing, and Implemented or Interpreted Law: 26B-1-213; 26B-3-108[~~26-1-5; 26-18-3~~]

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R414-60**	**Filing ID: 55503**

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R414-60. Medicaid Policy for Pharmacy Program

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

The purpose of this change is to update and clarify this rule text as needed.

Additionally, this rule updates the authorizing citations following the 2023 General Session recodification of the Department of Health and Human Services' (Department) statute.

4. Summary of the new rule or change:

This amendment updates names, terms, and entities in the text.

It also makes other technical and structural changes.

Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department's statute.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
There is no impact to other persons or entities as there are only minor changes and technical updates.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
There are no compliance costs to a single person or entity as there are only minor changes and technical updates.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 26B-1-213	Section 26B-3-108	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/14/2023

9. This rule change MAY become effective on:	08/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	06/15/2023

R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Program.
R414-60-1. [~~Introduction~~]Purpose and Authority.

(1) The Medicaid Pharmacy program reimburses for covered outpatient drugs dispensed to eligible Medicaid [~~clients~~]members by a pharmacy enrolled with Utah Medicaid pursuant to a prescription from an enrolled prescriber operating within the scope of the prescriber's license.

(2) Sections 26B-1-213 and 26B-3-108 authorize this rule.

R414-60-2. Definitions.

(1) "Covered outpatient drug" means a drug that meets the Centers for Medicare and Medicaid Services (CMS) covered outpatient drug definition as outlined in 42 CFR 447.502. The following provisions also apply:

(a) requires a prescription for dispensing;

(b) has a national drug code number;

(c) is eligible for federal medical assistance percentages funds;

(d) has been approved by the Food and Drug Administration; and

(e) is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible [~~beneficiary~~]member" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state[~~ of Utah~~] and is not located in Weber County, Davis County, Utah County, or Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" means the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects advertised savings, discounts, special promotions, or any other program available to the general public.

(6) "Wholesale acquisition cost" means the list price paid by the wholesaler, distributor, and other direct accounts for drugs purchased from the wholesaler's supply.

(7) "Medically accepted indication" in accordance with 42 U.S.C. 1396r-8 (k)(6), is any use approved by the Food and Drug Administration (FDA) and Cosmetic Act, or a use supported on one of the following compendia:

(a) American Hospital Formulary Service Drug Information;

(b) United State Pharmacopeia-Drug Information; or

(c) the DRUGDEX Information System.

R414-60-3. Member Eligibility Requirements.

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) In accordance with Subsection 1935(a) of the Social Security Act, Medicaid does not cover [~~O~~]outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible [~~beneficiaries~~]members[~~ will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act~~]. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to Medicaid members, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for members enrolled in an ACO.

(4) Classes of medications and individual drugs carved out from the ACO must be obtained through the [~~F~~]fee-for-[~~S~~]service [~~(FFS) ~~]benefit.

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for [~~F~~]federal [~~M~~]medical [~~A~~]assistance [~~P~~]percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), [~~when~~]if a multi-source A-rated legend drug is available in the generic form, Medicaid [~~will only ~~]reimburses only for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the state;

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug; or

(c) the generic form of the drug is unavailable in the marketplace as defined in the Utah Medicaid Pharmacy Services Provider Manual.

(3) 42 U.S.C 1396b(i)(23) requires Medicaid prescriptions not executed electronically to be written on tamper-resistant prescription forms as follows:

(a) tamper-resistant prescription forms must include each of the following:

(i) one or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(ii) one or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(iii) one or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(b) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper-resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(c) A pharmacy must maintain documentation that a Medicaid member or authorized representative has received a prescription for a covered outpatient drug. The documentation must clearly identify the covered outpatient drug and the date it was received.

(i) The Division of [~~Medicaid and Health Financing (DMHF)~~]Integrated Healthcare shall waive the proof of delivery requirement for Non-Controlled Schedule 2 [~~(Non-CII) ~~]prescriptions.

(ii) In accordance with Subsection R414-60-4(3)(c), the proof of delivery requirement remains for Controlled Schedule 2 (CII) medications that includes a signature or other documentation. The pharmacy shall document member receipt as stated in Subsection R414-60-4(3)(c).

(d) Claims for covered outpatient drugs not dispensed to a Medicaid member or the member's authorized representative within 14 days must be reversed and any payment from Medicaid must be returned.

R414-60-5. Limitations.

(1) Medicaid may place limitations on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Medicaid includes these limitations in the Pharmacy Services Provider Manual and its attachments. These limitations are incorporated by reference in Section R414-1-5 and may include the following:

(a) quantity limits or cumulative limits for a drug or drug class for a specified period[~~ of time~~];

(b) therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) prior authorization.

(2) A pharmacy may dispense a covered outpatient drug that requires prior authorization for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List (PDL) may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only [~~when~~]if dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for [~~F~~]federal [~~M~~]medical [~~A~~]assistance [~~P~~]percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible [~~beneficiaries~~]members.

(7) Medicaid does not cover drugs provided to a member during an inpatient hospital stay, neither as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers prescription cough and cold preparations meeting the definition of a covered outpatient drug.

(9) Medicaid [~~will~~]pays for no more than a one-month supply of a covered outpatient drug [~~per~~]for each dispensing, except for the following:

(a) Medicaid may cover medications on the Utah Medicaid Three-Month Supply Medication List, attachment to the Pharmacy Services Provider Manual, for up to a three-month supply per dispensing;

(b) Medicaid may cover prenatal vitamins for a pregnant woman, multiple vitamins with or without fluoride for a child who is zero through five years of age, and fluoride supplements for up to a three-month supply per dispensing;

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing; and

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a three-month supply per dispensing.

(10) Medicaid [~~will~~]pays for a prescription refill only [~~when~~]if 80% of the previous prescription has been exhausted, with the exception of controlled substances. Medicaid [~~will~~]pays for a prescription refill for controlled substances after 85% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) drugs for weight loss;

(b) drugs to promote fertility;

(c) drugs for the treatment of sexual dysfunction;

(d) drugs for cosmetic purposes;

(e) vitamins; except for prenatal vitamins for a pregnant woman, vitamin drops for a child who is zero through five years of age, and fluoride supplements;

(f) over-the-counter drugs (OTC) not included on the Utah Medicaid PDL and Resources attachment to the Pharmacy Services Provider Manual;

(g) drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(h) drugs given by a hospital to a patient at discharge;

(i) breast milk, breast milk substitutes, baby food, or medical foods. Prescription metabolic products for congenital errors of metabolism are covered through the Durable Medical Equipment benefit; and

(j) drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Claims for opioids used for the treatment of non-cancer pain are subject to the following limitations or restrictions set forth by the Division of [~~Medicaid and Health Financing (DMHF)~~]Integrated Healthcare:

(a) initial fill limits;

(b) monthly limits;

(c) quantity limits;

(d) additional limits for a child or pregnant woman;

(e) morphine milligram equivalents (MME) and cumulative morphine equivalents daily (MED) limits;

(f) concurrent use of opioids with high-risk drugs as defined by DMHF; or

(g) concurrent use of opioid medications in members who also receive medication-assisted treatment (MAT) for opioid use disorder.

(13) Antipsychotic medications prescribed to a Medicaid member who is 19 years of age or younger are limited as follows:

(a) no use of multiple antipsychotic drugs;

(b) no off-label use;

(c) no use outside established age guidelines; and

(d) no doses higher than FDA recommendations.

(14) Exceptions may be granted as appropriate through the prior authorization process.

(15) Attention-deficit/hyperactivity disorder (ADHD) stimulant medications are subject to the following limitations or restrictions set forth by DMHF for Medicaid members:

(a) age limits;

(b) monthly limits;

(c) quantity limits;

(d) cross-class limitations for concurrent use of an amphetamine class with methylphenidate class in children less than 18 years of age; or

(e) the use of no more than two ADHD stimulants by a member of any age.

(16) Medicaid evaluates exceptions to ADHD stimulant policy for medical necessity on a case-by-case basis.

R414-60-6. Copayment Policy.

(1) Medicaid members are to pay any applicable copayment amount that complies with the requirements of 42 CFR 447.56, the Utah Medicaid State Plan, and Rule R414-1.

(2) A Medicaid provider may not refuse services to a Medicaid member based on a member's inability to pay a cost-sharing amount in accordance with 42 CFR 447.52.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered[-] outpatient drugs are reimbursed as outlined in Attachment 4.19-B of the Utah Medicaid State Plan.

(3) A pharmacy that participates in the 340B program and uses medications obtained through the 340B program to bill Medicaid, must submit the [~~actual~~]acquisition cost of the medication on the claim.

(4) A pharmacy that participates in the federal supply schedule and uses medications obtained through the schedule to bill Medicaid, must submit the [~~actual~~]acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or all inclusive rate.

(5) A pharmacy that obtains and uses medications at a nominal price must submit the [~~actual~~]acquisition cost of the medication on the claim.

(6) Dispensing fees are outlined in Attachment 4.19-B of the Utah Medicaid State Plan. Medicaid [~~will~~]pays the lesser of the assigned dispensing fee or the submitted dispensing fee.

(7) Medicaid pays a pharmacy only one dispensing fee every 24 days for each covered outpatient drug[~~per pharmacy~~].

(8) Medicaid pays [~~A~~]a provider that immunizes a Medicaid member who is 19 years of age or older, [~~will be paid~~]for the cost of the immunization plus a dispensing fee. Medicaid pays the lesser of the allowed or submitted charges.

(9) A provider that immunizes a Medicaid member who is 18 years [~~old~~]of age or younger, [~~will~~]may only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid members who are 18 years [~~old~~]of age or younger must be obtained through the Vaccines for Children program.

(10) Diabetic supplies listed on the Utah Medicaid PDL are reimbursed at the lesser of the wholesale acquisition cost with no dispensing fee or the billed charges.

(11) Pursuant to Section 58-17b-805, a dispensing medical practitioner may prescribe and dispense medication directly to a patient [~~when~~]if providing outpatient cancer therapy. Details of reimbursement are found on the Medicaid website at http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php.

R414-60-8. Mandatory Patient Counseling.

(1) Medicaid members, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) Section R156-17b-610 does not require counseling if a Medicaid member or their representative refuses the offer of counseling.

(a) Only a pharmacist, pharmacy intern, or designated medical practitioner may provide oral counseling to a member or member's representative and answer questions concerning prescription drugs.

(3) The offer of counseling must be documented and producible upon request.

(4) Written information on a prescription order delivered to a member shall be in the form of patient information leaflets.

R414-60-9. New Drug Products.

A new drug product, including a new size or strength of an existing approved product, may be reviewed by the DUR Board to determine whether the drug should be subject to restrictions or limitations. New drugs may be withheld from coverage for no more than [~~twelve~~]12 weeks while restrictions or limitations are being evaluated.

R414-60-10. Over-the-Counter Drugs.

(1) Medicaid covers OTC drugs [~~when~~]if the drug is listed on the Utah Medicaid PDL and Resources attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

(2) For a Medicaid member who resides in a nursing home, OTC drugs on the approved list are not a benefit through the outpatient pharmacy program. The nursing-home rate of reimbursement includes payment for OTC drugs.

R414-60-11. Compounds.

(1) A compounded drug consists of two or more ingredients. Medicaid may only reimburse pharmacies for the ingredient that meets the definition of a covered outpatient drug, except for those listed as non-covered drugs in Section R414-60-5.

(2) Compounded non-sterile prescriptions must be prepared by personnel and in settings as defined in the United States Pharmacopeia and National Formulary Chapter <795>.

(3) Compounded sterile prescriptions must be prepared by personnel and in settings that have certified they adhere to the United States Pharmacopeia/National Formulary chapter <797> standard, and test the final product for sterility, potency, and purity.

(4) Medicaid does not cover bulk powders for compounded prescriptions.

R414-60-12. Provider-Administered Long-Acting Injectable Antipsychotic Drugs and Drugs for the Treatment of Opioid Use Disorders.

(1) A provider-administered drug is an outpatient drug, other than a vaccine, that is administered by a health care provider in a physician's office or other outpatient clinical setting.

(2) Medicaid may only reimburse for a provider-administered drug if the drug qualifies as a covered outpatient drug in accordance with 42 U.S.C 1396r-8.

(3) Selected provider-administered or provider-observed drugs must be dispensed directly to the provider or provider's staff. These include the following:

(a) long-acting injectable antipsychotics; and

(b) long-acting injectable drugs for the treatment of opioid use disorders.

KEY: Medicaid
Date of Last Change: May 12, 2021
Notice of Continuation: March 11, 2022
Authorizing, and Implemented or Interpreted Law: 26B-1-213; 26B-3-108[~~26-18-3; 26-1-5~~]

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Title No. - Rule No. - Section No.		
Rule or Section Number:	**R414-1-31**	**Filing ID: 55528**

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N. 1460 W.	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R414-1-31. Withholding of Payments

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

The purpose of this change is to implement by rule the False Claims Act as found in the United States Code.

4. Summary of the new rule or change:

In accordance with the Social Security Act and False Claims Act implementation, this amendment requires providers to establish written policies for employees that spell out administrative remedies for false claims and statements, and requires providers to comply with state laws pertaining to penalties, whistleblower protections, and written policies for preventing and detecting fraud, waste, and abuse.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.

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

There is no impact on non-small businesses as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Medicaid providers that do not comply with the False Claims Act are subject to civil fines and penalties. There is, however, no way to determine how those penalties would be assessed. Usual payments to providers, based on current methodology, remain unaffected.

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

A single Medicaid provider that does not comply with the False Claims Act is subject to civil fines and penalties. There is, however, no way to determine how those penalties would be assessed. Usual payments to providers, based on current methodology, remain unaffected.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis. Businesses will see neither costs nor revenue as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26B-1-213	Section 26B-3-108	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/31/2023

9. This rule change MAY become effective on:	09/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	07/11/2023

R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-31. Withholding of Payments.

(1) In addition to other remedies allowed by law and unless specified otherwise, the Department may withhold payments to a provider or contractor if:

(a) the provider or contractor fails to provide the requested information within 30 calendar days from the date of a written request for information;

(b) the provider or contractor has an outstanding balance owing the Department for any reason; or

(c) the provider or contractor receives more than $5,000,000 in reimbursement annually from the Department and fails to comply with [~~Section 6032 of the Deficit Reduction Act~~]42 U.S.C. 1396a(a)(68).

(2) The Department or the [~~Utah~~]Office of the Inspector General of Medicaid Services may determine a provider or contractor to be noncompliant if the provider or contractor cannot submit, upon request:

([~~i~~]a) an attestation of compliance with [~~Section 6032 of the Deficit Reduction Act;~~]the Social Security Act, 42 U.S.C. 1396a(a)(68); and

(b) an attestation of compliance with the False Claims Act, 31 U.S.C. Sections 3729 through 3733.

[~~(ii) the provider's policies and procedures for detecting and preventing fraud, waste, and abuse; and~~

~~(iii) an employee handbook containing a specific discussion of the rights of employees to be protected as whistleblowers and the provider's policies and procedures for detecting and preventing fraud, waste, and abuse.~~]

([~~2~~]3) The Department shall provide written notice before withholding payments.

([~~3~~]4) When the Department rescinds withholding of payments to a provider or contractor, it will, without notice, resume payments according to the regular claims payment cycle.

KEY: Medicaid
Date of Last Change: 2023[~~July 1, 2022~~]
Notice of Continuation: December 13, 2021
Authorizing, and Implemented or Interpreted Law: 26B-1-[~~5~~]213; 26B-[~~18~~]3-[~~3~~]108; 26B-[~~34~~]8-[~~2~~]132

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Title No. - Rule No. - Section No.		
Rule or Section Number:	**R414-505**	**Filing ID: 55527**

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N. 1460 W.	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

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

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

The purpose of this change is to update and clarify the rule text as needed. Additionally, this rule updates the authorizing citations following the 2023 Legislative Session recodification of the Department of Health and Human Services' statute.

4. Summary of the new rule or change:

This amendment updates names, terms, and entities in the text. It also makes other technical and structural changes. Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department of Health and Human Services' statute.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no impact to other persons or entities as there are only minor changes and technical updates.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
There are no compliance costs to a single person or entity as there are only minor changes and technical updates.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2024**	**FY2025**	**FY2026**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 26B-1-213	Section 26B-3-108	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/31/2023

9. This rule change MAY become effective on:	09/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.			
Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	07/11/2023

R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.
R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.
R414-505-1. [~~Introduction~~]Purpose and Authority.

(1) This rule defines the participation requirements in the [~~N~~]nursing [~~C~~]care [~~F~~]facility [~~N~~]non-[~~S~~]state [~~G~~]government-[~~O~~]owned [~~U~~]upper [~~P~~]payment [~~L~~]limit (NF NSGO UPL) program.

(2) This rule is authorized under Attachment 4.19-D of the [~~Utah~~]Medicaid State Plan, and by Sections 26B-1-[~~5~~]213 and [~~26-18-3~~]26B-3-108.

R414-505-2. Definitions.

In addition to the following, the definitions in Section 26B-[~~18~~]3-[~~502~~]310 and Attachment 4.19-D of the Medicaid State Plan apply to this rule:

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

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

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

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

(5) "Effective date of the change of ownership" means the issue date of the license for the new owner by the [~~Utah~~]Department of Health and Human Services.

R414-505-3. [~~Nursing Care Facility Non-State Government-Owned Upper Payment Limit~~]NF NSGO UPL Payment Program.

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

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

(1) [~~Required application. -~~]Before an NSGO nursing care facility may receive supplemental payments, the appropriate NSGE must certify certain facts, representations, and assurances regarding program requirements. The NSGE must complete the [~~"~~]NF NSGO UPL [~~P~~]program [~~N~~]notice of [~~P~~]participation [~~F~~]form[~~",~~] prescribed by the [~~Medicaid agency~~]Department. The NSGE must email the required application to nf_rates@utah.gov.

[~~(2) The required application must be mailed to the correct address, as follows:~~
~~Via United States Postal Service:~~
~~Utah Department of Health~~
~~DMHF, BCRP]~~
~~Attn: Reimbursement Unit~~
~~P.O. Box 143102~~
~~Salt Lake City, UT 84114-3102~~
~~Via United Parcel Service, Federal Express, and similar:~~
~~Utah Department of Health~~
~~DMHF, BCRP~~
~~Attn: Reimbursement Unit~~
~~288 North 1460 West~~
~~Salt Lake City, UT 84116-3231~~]

([~~3~~]2) The [~~"~~]NSGO NF UPL [~~P~~]program [~~N~~]notice of [~~P~~]participation [~~F~~]form[~~"~~] must be complete and accurate or it will be returned. The Department does not consider [~~I~~]incomplete forms [~~shall not be considered -~~]as providing notice of intent to participate.

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

(1)(a) An NSGE must own [~~T~~]the nursing care facility[~~- must be owned by an NSGE~~].

(b) [~~Prior to~~]Before the Medicaid agency initiat[~~ing~~]es a contract, the nursing care facility owner shall provide appropriate legal evidence, as determined by the Medicaid agency, demonstrating an NSGE owns the nursing care facility[~~- is owned by an NSGE~~].

(c) A nursing care facility participating in this supplemental payment program must notify the [~~Reimbursement Unit within the Bureau of Coverage and Reimbursement Policy~~]Office of Financial Services[~~,~~] at the email address noted [~~above~~]in Section R414-505-4, of changes in ownership that may affect the nursing care facility's continued eligibility within 14 calendar days after [~~such~~]the change.

(2) The [~~Utah -~~]Medicaid provider enrollment process must be complete.

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

(b) The effective date for an NF NSGO UPL contract for a nursing care facility to participate in the NF NSGO UPL supplemental payments [~~shall~~]must be the latter of the following dates:

(i) [~~T~~]the effective date of the [~~C~~]change of [~~O~~]ownership[~~- (CHOW)~~];

(ii) [~~T~~]the [~~postmark -~~]email date of the notice of intent to participate as noted in Section R414-505-4; or

(iii) [~~T~~]the effective date of the Medicaid provider enrollment.

(4) Once a contract is in effect, the Department shall make payments [~~will be made -~~]in accordance with Attachment 4.19-D of the Medicaid State Plan and the NF NSGO UPL contract.

(5)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through [~~I~~]intergovernmental [~~T~~]transfer (IGT) [~~A~~]agreements of public funds or other permissible source-of-seed funding from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.

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

R414-505-6. [~~Intergovernmental Transfer (~~|IGT[~~)~~] Certification.

(1) With its IGT, using the IGT certification form prescribed by the [~~Medicaid agency~~]Department, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The NSGE shall specify[~~,~~] on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.

(2) Using the IGT annual certification form prescribed by the [~~Medicaid agency~~]Department, the NSGE shall submit its annual IGT certification required in Section 26B-[~~18~~]3-[~~21~~]130 no later than 30 days following the end of the NSGE's fiscal year end date.

KEY: Medicaid
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