

State of Utah
Administrative Rule Analysis
 Revised November 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-132	Filing ID (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-132. Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of the rule more clear, the Penalties section is being removed because penalties are already provided for in statute, and the Severability section is being updated to use the department's current language. The sample disclosure form is being removed because the required contents are described in the rule and insurers have developed their own disclosures in the 30 years since the rule was enacted. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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 anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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 for any affected persons. The changes are largely clerical in nature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

6. A) 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	FY2022	FY2023	FY2024
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			
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

B) Department head approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

7. 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 31A-2-201		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. 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*):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	

Date Issued	
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*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. 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 (mm/dd/yyyy): 01/31/2022

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

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (mm/dd/yyyy): 02/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 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:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	12/08/2021
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R590. Insurance, Administration.

R590-132. Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection.

R590-132-1. Authority~~[- Purpose and Scope].~~

This rule is promulgated by the ~~[Insurance C]~~ commissioner pursuant to ~~[the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers]~~ Section 31A-2-201.

R590-132-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) identify and restrict ~~[certain]~~unfairly discriminatory underwriting, classification, or declination practices regarding HIV infection~~[- that the commissioner finds are or would be unfairly discriminatory if engaged in.]; and~~

(b) ~~[This rule also provides-]~~establish guidelines for the confidentiality of ~~[AIDS-]~~HIV-related testing~~[- which, if not followed, would be unfairly discriminatory or hazardous to members of the insuring public].~~

(2) This rule applies to ~~[every-]~~each licensee authorized to ~~[engage in the-]~~conduct insurance business ~~[of insurance in Utah under Title 31A of the Utah Code].~~

R590-132-~~2]~~3. Definitions.

~~[For the purpose of this rule, the commissioner adopts the definitions set forth in Section 31A-1-301 and in addition, the following]~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

~~[A. HIV infection is defined as the presence of Human Immunodeficiency Virus (HIV) in a person as detected by the following:]~~ (1) "HIV" means the Human Immunodeficiency Virus.

(2) "HIV infection" means HIV is present in an individual and was detected by:

~~[1. P](a) the presence of HIV antibodies [to HIV,] that are verified by an appropriate confirmatory test[s];~~

~~[2. P](b) the presence of HIV antigen[-];~~

~~[3. I](c) isolation of HIV[-]; or~~

~~[4. D](d) demonstration of HIV proviral DNA.~~

R590-132-~~[3]4~~. Rule.

~~[A. Persons-]~~(1) No individual with HIV infection will ~~[not-]~~be singled out for ~~[either-]~~unfairly discriminatory or preferential treatment for insurance purposes.

~~[B.-]~~(2) To properly classify risks related to covering a prospective insured[s], an insurer[s] may require reasonable testing.

(3) The ~~[A]~~application ~~[questions-]process~~ must conform to the ~~[following-]guidelines[-] in Subsections (3)(a) through (f).~~

~~[1-]~~(a) No inquiry in an accident and health insurance application or a life insurance application ~~[for health or life insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall-]may~~ be directed toward determining the applicant's sexual orientation.

~~(b) No insurer or insurance support organization on the insurer's behalf may conduct an investigation in connection with an accident and health insurance application or a life insurance application to determine the applicant's sexual orientation.~~

~~[2-]~~(c) Sexual orientation may not be used in the underwriting process or ~~[in the determination of-]to determine~~ insurability.

~~[C. When used, the testing of i]~~(d) Insurance applicant[s ~~must not be-] testing shall be administered [on an unfair basis]in a fair manner.~~

~~(e) If an insurer rates substandard or declines a prospective insured [is to be declined or rated substandard-]because of HIV infection, [such action must be based-]the insurer must base the decision on appropriate confirmatory tests.~~

~~[D. Notice and Consent.-]~~(f) No person ~~[engaged in the business of insurance shall-]may~~ require an individual applying for insurance to take an HIV test ~~[of an individual in connection with an application for insurance-]unless the individual signs a written release [on a form which contains the following information]that includes:~~

~~[1. A-]~~(i) a statement ~~[of-]explaining~~ the test's purpose, content, and use ~~[and meaning of the test.];~~

~~[2. A-]~~(ii) a statement regarding disclosure of the test results, ~~[including information explaining-]explaining to the applicant the following:~~

~~(A) the effect of releasing information to a person [directly engaged in the-]working in the insurance business[-of insurance. The applicant should be advised that-];~~

~~(B) the insurer may disclose test results to others involved in the underwriting and claims review processes[-If-];~~

~~(C) if the HIV test is positive, the [results will be reported by those conducting the test or providers receiving test results-]person conducting the test or the provider receiving the test results will report the results to the local health department[- If the applicant does not designate a physician or other health care provider, the insurer shall report a positive test result to the local health department. If-]; and~~

~~(D) if the insurer is a member of the Medical Information Bureau ("MIB, Inc."), the insurer may report the test results to MIB, Inc. in a generic code [which-]that signifies only non-specific test abnormalities[-]; and~~

~~[3. A-]~~(iii) a provision ~~[where-]for~~ the applicant ~~[directs that-]to designate a health care professional to receive~~ any positive screen results ~~[be reported to a designated health care professional of his/her choice-]for post-test counseling.~~

~~[----- For purposes of this section, insurers will use the following notice and consent disclosure form or a form that contains similar language. Such form is not considered part of the policy or policy application.~~

TABLE

Illustrative HIV Testing Informed Consent Form

EXAMINER INSURER

ADDRESS ADDRESS

.....
.....

NOTICE AND CONSENT FOR TESTING

WHICH MAY INCLUDE AIDS VIRUS (HIV) ANTIBODY/ANTIGEN TESTING

To determine your insurability, the insurer named above (the insurer) is requesting that you provide a sample of your blood and/or other bodily fluid for testing and analysis. In order to adequately perform all testing procedures, it may be necessary for you to provide a sample of more than one of these bodily fluids. All tests will be performed by a licensed laboratory.

Unless precluded by law, tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS virus. The HIV antibody test performed is actually a series of tests done by a medically accepted procedure. The HIV antigen test directly identifies AIDS viral particles. These tests are extremely reliable. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats), screening for liver or kidney disorders, diabetes, immune disorders, and other physical conditions.

All test results will be treated confidentially. They will be reported by the laboratory to the insurer. When necessary for business reasons in connection with insurance you have or had applied for with the insurer, the insurer may disclose test results to others such as its affiliates, reinsurers, employees, or contractors. If the insurer is a member of the Medical Information Bureau (MIB, Inc.), and should the insurer request an additional sample of bodily fluid for further testing, and you choose to decline that request, your declination to be tested will be reported to the MIB, Inc. Regardless of the number of tests requested, if the final test results for HIV antibodies/antigens are other than normal, the insurer will report to the MIB, Inc. a generic code which signifies only a non-specific abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc. in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There will be no other disclosure of test results or even that the tests have been done except as may be required or permitted by law or as authorized by you.

If your HIV test results are normal, no routine notification will be sent to you. If the HIV test results are other than normal, the insurer will contact you. The insurer may also contact you if there are other abnormal test results which, in the insurer's opinion, are significant. The insurer may ask you for the name of a physician or other health care provider to whom you may authorize disclosure and

with whom you may wish to discuss the results. The laboratory, physician or other health care provider will report positive test results to the Health Department. If you have not designated a physician or other health care provider to receive disclosure of positive test results, the insurer will report positive test results to the health department.

Positive HIV antibodies/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.

I have read and I understand this notice and consent for testing which may include HIV antibodies/antigen testing. I voluntarily consent to the withdrawal from me of blood and/or other bodily fluid, the testing of that blood and/or other bodily fluid, and the disclosure of the test results as described above.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

.....
Proposed Insured _____ Date of Birth _____

.....
Signature of Proposed Insured _____ Date _____

.....
State of Residence _____

.....
Designated Physician or Health Care Provider
that is to Receive Positive Test Results _____

.....
Street Address _____

.....
City _____ State _____ Zip _____

R590-132-[4]5. Dissemination.

Each insurer ~~is instructed to~~ shall distribute a copy of this rule or an equivalent summary to all personnel engaged in activities requiring knowledge of this rule, and ~~to~~ shall instruct ~~them as to its~~ each individual engaged in those activities on the rule's purpose, scope, and operation.

~~R590-132-[5. Penalties.~~

~~Any licensee that violates this rule will be subject to the forfeiture provisions set forth in Section 31A-2-308 and 31A-23-216.~~

~~R590-132-[6. Confidentiality.~~

~~[Except as outlined in R590-132-3(D) above, all positive or indeterminate records of the applicant held by the licensee that refer to the HIV status shall be held as confidential records under restricted access and will not be re-released unless re-disclosure is specifically authorized by the applicant]~~ (1) Except as provided in Subsection R590-132-4(3)(f):

(a) a licensee shall hold an applicant's positive or indeterminate records that refer to HIV status as confidential records under restricted access; and

(b) a licensee may not re-release the records unless the applicant authorizes the re-disclosure.

(2) Re-release and ~~[R]~~re-disclosure are required when the applicant's test results are to be used for purposes other than ~~[those included in]~~the initial release.

R590-132-7. Severability.

[If any provision of this rule or its application to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.]If any provision of this rule, Rule R590-132, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law

Date of Enactment or Last Substantive Amendment: March 1, 1998

Notice of Continuation: November 25, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201