

State of Utah
Administrative Rule Analysis
 Revised June 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.):	R590-149	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:
R590-149. Americans with Disabilities Act Grievance Procedures
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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. Other changes make the language of the rule more clear, and add Purpose and Scope and Severability sections. 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	
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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): 01/03/2022

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): 01/10/2022

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):	11/08/2021
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R590. Insurance, Administration.

R590-149. Americans with Disabilities Act ~~(ADA)~~ Grievance Procedures.

R590-149-1. Authority ~~and Purpose~~.

~~[(1)]~~ This rule is promulgated by the commissioner pursuant to Section 31A-2-201 ~~[(3)(a) and Subsection 63G-3-201(3) of the State Administrative Rulemaking Act. The Insurance Department, pursuant to 28 CFR 35.107, adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, as amended].~~

R590-149-2. Purpose and Scope.

~~[(2)]~~ The purpose of this rule is to implement the ~~[provisions of 28 CFR 35, and Title II of the]~~ Americans ~~[W]~~with Disabilities Act ~~(ADA), 42 U.S.C. 12101-12213 and 28 CFR 35,~~ which provides that no individual ~~[shall]~~may be excluded from participation in or be denied the benefits of the services, programs, or activities of the ~~[Insurance D]~~department, or be subjected to discrimination by the department because of a disability.

(2) This rule applies to:

(a) a qualified individual; and

(b) the department.

R590-149-~~2~~3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. The definitions in the Americans with Disabilities Act, 42 U.S.C. 12101-12213 and 28 CFR 35, are incorporated by reference. Additional terms are defined as follows:

(1)(a) "[~~The~~]ADA [~~C~~]ordinator" means ~~[the]~~an employee assigned by the commissioner to investigate and facilitate the prompt

and equitable resolution of a complaint[s] filed by a qualified ~~[persons with disabilities]~~ individual.

(b) The ADA [€]coordinator may be a representative of the Department of Government Operations, Division of Human Resource Management assigned to the department.

(2) ~~["Department" means the Insurance Department]~~ "Complainant" means a qualified individual or a qualified individual's authorized representative.

(3)(a) "Designee" means an individual appointed by the commissioner ~~[or a director]~~ to investigate an allegation[s] of ADA non[~~]~~compliance ~~[in the event]~~ when the ADA [€]coordinator is unable or unwilling to ~~[conduct an investigation]~~ investigate for any reason, including a conflict of interest.

(b) A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the department affected by a complaint filed under this rule.

~~["Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.~~

~~["Major life activities" includes caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.~~

~~["Qualified Individual" means an individual who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the department. A qualified individual also who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.]~~

R590-149-~~3~~4. ~~[Filing of] Complaint[s].~~

(1) Any qualified individual may file a complaint alleging noncompliance with ~~[Title II of the Americans with Disabilities Act, as amended, or the]~~ the ADA or a federal regulation[s] promulgated thereunder.

(2) ~~[Q]~~A qualified individual[s] shall file ~~[their]~~ a complaint[s] with the ~~[department's]~~ ADA coordinator, unless the complaint alleges that the ADA coordinator ~~[was]~~ is non-compliant, in which case a qualified individual[s] shall file ~~[their]~~ a complaint[s] with the ~~[department's]~~ designee.

(3) ~~[Q]~~A qualified individual[s] shall file ~~[their]~~ a complaint[s] within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the commissioner has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(4) Each complaint shall:

(a) include the qualified individual's name and address;

(b) include the nature and extent of the qualified individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant ~~[or by his legal representative]~~.

(5) [€]A complaint[s] filed on behalf of a class[es] of qualified individuals or a third party[ies] shall describe ~~[or]~~ and identify by name, if possible, the alleged victims of discrimination.

(6) If ~~[the]~~ a complaint is not in writing, the ADA coordinator or designee shall ~~[transcribe or otherwise]~~ reduce the complaint to writing ~~[upon receipt of the complaint]~~.

(7) By ~~[the]~~ filing ~~[of]~~ a complaint or a subsequent appeal, the complainant authorizes ~~[necessary parties]~~ the ADA coordinator or designee to conduct a confidential review of all relevant information, including:

~~(a) any record[s] classified as private or controlled under [the Government Records Access and Management Act, Utah Code, Subsection] Sections 63G-2-302(4)(b) and [Section] 63G-2-304, consistent with [42 U.S.C. 12112(d)(4)(A), (B), and (C) and] 42 U.S.C. Section 12112(d)(3)(B) and (C)[;] and 42 U.S.C. 12112(d)(4)(A), (B), and (C); and~~

~~(b) any relevant information otherwise protected by statute, rule, regulation, or other law.~~

R590-149-~~4~~5. Investigation ~~[of] Complaint[s].~~

(1) The ADA coordinator or designee shall ~~[conduct an investigation of]~~ investigate each complaint received ~~[The investigation shall be conducted]~~ to the extent necessary to assure all relevant facts are determined and documented ~~[This may include gathering all information listed in Subsection R590-149-3(4) and (7) of this rule if it is not made available by the complainant]~~.

(2)(a) The ADA coordinator or designee may seek assistance from the Attorney General's ~~[staff]~~ Office and the ~~[department's human resource and budget staff in determining]~~ Division of Human Resource Management to determine what action, if any, should be taken on the complaint.

(b) The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

~~(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:~~

~~(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it~~

would require a separate appropriation;

~~_____ (b) require facility modifications; or~~

~~_____ (c) require reassignment to a different position.]~~

R590-149-[5]6. [Issuance of] Decision.

(1) ~~[W]The ADA coordinator or designee shall issue a recommendation to the director within 15 working days after receiving the complaint[, the ADA coordinator or designee shall recommend to the director in writing or in another acceptable suitable format stating what action, if any, should be taken on the complaint].~~

(2) If the ADA coordinator or designee is unable to make a recommendation within ~~[the]~~15 working days~~[period]~~, the complainant shall be notified ~~[in writing, or by another acceptable format suitable to the complainant, stating why]~~that the recommendation is delayed and ~~[what]~~given an estimate of the additional time ~~[is]~~needed.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation from the ADA coordinator or designee to resolve the complaint.

~~_____ (4) The director shall [render a]issue a written decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee.~~

~~_____ (5) The director shall take all reasonable steps to implement the decision[. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant].~~

~~_____ (6) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Governor's Office of Planning and Budget, the Division of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would require:~~

~~_____ (a) an expenditure of funds beyond the applicable budgetary line item;~~

~~_____ (b) a facility modification; or~~

~~_____ (c) reassigning the qualified individual to a different position.~~

R590-149-[6]7. Appeal[s].

(1) The complainant may appeal the decision of the director to the commissioner by filing an appeal within ten working days ~~[from the]~~of receipt of the director's decision.

(2) The appeal shall be filed in writing, or in another accessible format reasonably suited to the complainant's ability.

(3)(a) The commissioner may name ~~[a designee to assist on]~~an assistant to help with the appeal.~~[The]~~

~~_____ (b) Neither the director, the ADA coordinator[and the director's designee may not also], nor the designee may be the commissioner's [designee]assistant for the appeal.~~

(4) ~~[In the appeal the complainant]~~The appeal shall describe, in sufficient detail, why the director's decision does not effectively address the complainant's ~~[needs]~~requirements.

~~_____ (5)(a) The commissioner [or designee]shall review the ADA coordinator's recommendation, the director's decision, and the [points]issues raised on appeal prior to reaching a decision.~~

~~_____ (b) The commissioner may direct additional investigation, as necessary.~~

~~_____ (6) The commissioner shall consult with representatives from any other state agency[ies] that [would]may be affected by the decision,[including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:~~

~~_____ (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;~~

~~_____ (b) require facility modifications; or~~

~~_____ (c) require reassignment to a different position] as provided in Subsection R590-149-6(6).~~

~~_____ ([6]7) The final written decision shall be issued by the commissioner within [fifteen]15 working days [after]of receiving the [complainant's appeal and shall be in writing or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant]appeal.~~

~~_____ ([7]8) If the commissioner [or designee]is unable to reach a final decision within [the fifteen working day period]15 working days, [he shall notify the complainant in writing or by another accessible format suitable to the complainant, why]the qualified individual will be notified that the final decision is being delayed and given an estimate of the additional time needed to reach a decision.~~

R590-149-[7]8. [Classification of] Records Classification.

(1)(a) ~~[R]A record[s] created in administering this rule [are]is classified as "protected" under [Subsection]Section 63G-2-305[(9), (22), (24), and (25)].~~

~~_____ ([2]b) After [issuing]a decision is issued under Section R590-149-[5]6 or a final decision [up]on appeal under Section R590-149-[6]7, any portion[s] of the record pertaining to the [complainant's]qualified individual's medical condition shall remain classified as "private" [as defined]under Section 63G-2-302[(1)(b)] or "controlled" [as defined in]under Section 63G-2-304, [as]consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C)[, at the option of the ADA coordinator].~~

~~_____ ([a]The)(2) Notwithstanding Subsection (1), the written decision of the [division]director or commissioner [shall be]is classified as "public" [information. All other records, except "controlled" records under Subsection R590-149-7(2), shall be classified as~~

~~"private."~~ under Section 63G-2-301.

R590-149-~~8~~9. Relationship to Other Laws.

This rule does not prohibit or limit the use of any remedy[ies] available to an individual[s] under:

(1) ~~[the state Anti Discrimination Complaint Procedures Section 67-19-32 and 34A-5-107]~~ Title 34A, Chapter 5, Utah Antidiscrimination Act;

(2) ~~[the Federal ADA Complaint Procedures 28 CFR 35.170 through 28 CFR 35.178]~~ the Americans with Disabilities Act, 42 U.S.C. Section 12101-12213; or

(3) any other ~~[Utah S]~~ state or federal law that provides equal or greater protection for the rights of an individual[s] with a disability[ies].

R590-149-10. Severability.

If any provision of this rule, Rule R590-149, 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, ADA

Date of Enactment or Last Substantive Amendment: August 2, 2011

Notice of Continuation: June 5, 2017

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2)