

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-207</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R590-207. Health Producer Commissions for Small Employer Groups
<b>3. Purpose of the new rule or reason for the change</b> (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.
<b>4. Summary of the new rule or change</b> (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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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, remove the Penalties section because penalties are already provided for in statute, remove the Effective Date because the rule is already in force, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
<b>C) Small businesses</b> ("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.
<b>D) Non-small businesses</b> ("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**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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	Section 31A-30-104	

**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*):

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	

<b>Issue, or version</b>	
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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*):

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

**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): 08/01/2022

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

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

**10. This rule change MAY become effective on** (mm/dd/yyyy): 08/08/2022

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.

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date</b> (mm/dd/yyyy):	06/15/2022
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**R590. Insurance, Administration.**

**R590-207. Health Producer Commissions for Small Employer Groups.**

**R590-207-1. Authority.**

This rule is ~~issued and based upon the authority granted the commissioner under Subsections 31A-2-201(3)(a) and 31A-30-104(7)]~~ promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-30-104.

**R590-207-2. Purpose and Scope.**

(1) The purpose of this rule is to establish guidelines relating to commission structure for insurance producers in the small employer group market that affect access to health insurance coverage for small employer groups.

(2) This rule applies to a carrier offering a health benefit plan in the small employer market.

**R590-207-3. [Applicability.**

~~This rule applies to all licensed carriers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.~~

**R590-207-4. ]Definitions.**

~~The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103.

**R590-207-~~5~~4. Commission Schedule Structure.**

(1) A ~~health insurance carrier shall~~ carrier may not structure a producer commission schedule ~~[in a way]~~ that, directly or indirectly, creates a restriction, hindrance, or barrier to access to coverage for the smallest ~~[size]~~ groups or groups with the greatest health

risks.

(2) The commission in the commission schedule for the smallest ~~[size]~~ groups or the groups with the greatest health risks may not be designed to avoid, directly or indirectly, the requirements of guaranteed issue or renewal in the marketing of health insurance to small business owners.

(3) An insurer ~~[shall]~~ may not design a commission structure that lessens the incentive to insure a small employer group that is smallest in size or with the greatest health risks.

(4)(a) An insurer is not required to base commissions on a percentage.

~~(b) An insurer [is permitted to pay no ] may elect not to pay commissions on all business[-or to-].~~

~~(c) An insurer may elect to pay a dollar amount based on factors other than risk characteristics.~~

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**~~R590-207-6. Commission Structure Examples.~~**

~~(1)](5) Examples of commission structures that [are in compliance would be] comply with this rule include:~~

~~(a)(i) a 10% commission for [employer] group size 2-5;~~

~~(ii) a 9% commission for group size 6-25; and~~

~~(iii) a 7% commission for group size 26-50; or~~

~~(b)(i) [\$20/ Per Member Per Month (PMPM) for employer ]\$20 per member per month (PMPM) for group size 2-5;~~

~~(ii) \$18[?] PMPM for group size 6-25; and~~

~~[e) \$16/(iii) \$16 PMPM for group size 26-50.~~

~~(2)](6) An example of a commission structure that [is not in compliance would be] does not comply with this rule is:~~

~~(a) 3% commission for [employer] group size 2-5;~~

~~(b) 8% commission for group size 6-25; and~~

~~(c) 7% commission for group size 26-50.~~

**~~R590-207-7. Penalties.~~**

~~Any carrier with a commission structure found to be in violation of this rule shall be subject to the penalties provided for in Section 31A-2-308.~~

**~~R590-207-8. Enforcement Date.~~**

~~The commissioner will begin enforcing the amendments to this rule 45 days from the rule's effective date.~~

**~~R590-207-9]5. Severability.~~**

~~[If any provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.]If any provision of this rule, Rule R590-207, 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 Last Change: August 2, 2011**

**Notice of Continuation: August 12, 2021**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202**