

**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>R590-215</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>
R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance
<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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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, and update the Severability section to use the department's current language. The Enforcement Date section is being removed because the rule is already in force. 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		

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

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)		
<b>A) Comments will be accepted until</b> (mm/dd/yyyy):	07/01/2022	
<b>B) A public hearing (optional) will be held:</b>		
<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

<b>10. This rule change MAY become effective on</b> (mm/dd/yyyy):	07/08/2022
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**

<b>To the agency:</b> 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 <i>Utah State Bulletin</i> 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): 05/16/2022

**R590. Insurance, Administration.**

**R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.**

**R590-215-1. Authority.**

This rule is promulgated by the commissioner ~~[of Insurance under the general authority granted under Subsection 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department]~~ pursuant to Section 31A-2-201.

**R590-215-2. Purpose and Scope.**

~~[This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:~~

- ~~\_\_\_\_\_ (1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(e) and 31A-21-314(2); and~~
- ~~\_\_\_\_\_ (2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.~~

**R590-215-3. Applicability and Scope.**

- ~~\_\_\_\_\_ (1) The purpose of this rule is to:~~
  - ~~\_\_\_\_\_ (a) recognize arbitration as an acceptable method of alternative dispute resolution;~~
  - ~~\_\_\_\_\_ (b) provide guidelines for disclosure of a contract arbitration provision; and~~
  - ~~\_\_\_\_\_ (c) comply with the requirements outlined in Subsection 29 CFR 2560.503-1.~~
- ~~\_\_\_\_\_ (2) This rule applies to [the following] an individual insurance policy and a group [policies] insurance policy issued or renewed on~~

or after July 1, 2002 for:

(a) income replacement [~~policies~~]insurance; and

(b) a health benefit plan[s].

~~[(2) Long Term Care]~~(3) Long-term care and Medicare supplement policies are not considered health benefit plans.

### **R590-215-~~4~~3. Definitions.**

~~[For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78B-11-102, 29 CFR 2560.503-1(m), and the following]~~Terms used in this rule are defined in Sections 31A-1-301, 31A-22-629, and 29 CFR 2560.503-1(m). Additional terms are defined as follows:

(1) ~~["Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.~~

~~\_\_\_\_\_~~(2) ~~]"Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.~~

~~[(3)]~~(2) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition [~~precedent to~~]before the pursuit of an otherwise available judicial remedy.

~~\_\_\_\_\_~~(3) "Permissible arbitration provision" means an arbitration provision in an insurance policy that:

~~\_\_\_\_\_~~(a) allows for an action to be brought against an insurer;

~~\_\_\_\_\_~~(b) prohibits the insurance policy to be construed according to the laws of another jurisdiction, except as necessary to meet the requirements of compulsory insurance laws of the other jurisdiction;

~~\_\_\_\_\_~~(c) permits Utah courts of jurisdiction over an action against the insurer; and

~~\_\_\_\_\_~~(d) limits the right of action against the insurer to less than three years from the date the cause of action accrues.

~~\_\_\_\_\_~~(4) "Voluntary binding arbitration" means a contract provision that, at the election of the insured, requires an insurer to submit to arbitration [~~as set forth in such contract~~], provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

### **R590-215-~~5~~4. ~~[Rule]~~Permissible Arbitration Provisions.**

(1) Compulsory binding arbitration is not a permissible arbitration provision.

(2) Compulsory non-binding arbitration is a permissible arbitration provision when [~~utilized~~]used as an internal review of an adverse benefit determination under 29 CFR [~~Subsection~~]2560.503-1(c)(4).

(3) Voluntary binding arbitration, at the election of an insured [~~party~~], is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR [~~Subsection~~]2560.503-1(c)(3)(iii).

(4) [~~Policy forms~~]A policy form containing a compulsory binding or a voluntary binding arbitration provision[s] for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv) [~~Such~~], and these provisions in any previously [~~approved~~]filed form[s] are declared not enforceable [~~They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107~~].

(5)(a) Each application [~~pertaining to~~]for an individual or group health benefit plan [~~and~~]or income replacement insurance policy [~~which~~]that contains a voluntary arbitration provision [~~must~~]shall include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF [~~]~~ (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION, FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

~~Such~~(b) The statement described in Subsection (5)(a) shall [~~must~~]be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and [~~]~~ shall be contained in the certificate of insurance or other disclosure of benefits.

(6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.

(7) [~~All~~]Any arbitration provision[s] contained in an insurance [~~policies shall be in compliance with the "Utah Arbitration Act,"~~]policy shall comply with Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(8) [~~Any such~~]An agreement for arbitration [~~shall~~]may not obligate an insured to pay for the arbitration as part of the voluntary appeal in accordance with 29 CFR 2560.503-1(c)(3)(v).

(9) [~~No~~]An arbitration provision may not require that arbitration be held at a place further from the residence of the insured than

the nearest location of a State Court of General Jurisdiction.

**R590-215-~~6~~5. Severability.**

~~[If any provision of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable]~~If any provision of this rule, Rule R590-215, 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.

[

**~~R590-215-7. Enforcement Date.~~**

~~\_\_\_\_\_The commissioner will begin enforcing the revised provisions of this rule when they take effect.]~~

**KEY: health insurance arbitration**

**Date of Enactment or Last Substantive Amendment: May 20, 2003**

**Notice of Continuation: December 8, 2017**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 29 CFR 2560.503-1**