

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-235

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	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 persons:		
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:

R590-235. Medicare Prescription Drug Plan

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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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, remove the Enforcement Date section 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

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) 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	FY2023	FY2024	FY2025
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	FY2023	FY2024	FY2025
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 Commissioner of Insurance, Jonathan T. Pike, 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 31A-2-201		

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: **12/01/2022**

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

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

9. This rule change MAY become effective on: **12/08/2022**

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

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:	10/14/2022
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R590. Insurance, Administration.

R590-235. Medicare Prescription Drug Plan.

R590-235-1. Authority.

This rule is promulgated [~~pursuant to Subsection 31A-2-201 (3), wherein the Commissioner is empowered to administer and enforce Title 31A, and to make administrative rules to implement the provisions of Title 31A]~~by the commissioner pursuant to Section 31A-2-201.

R590-235-2. Purpose and Scope.

~~_____ (1) The purpose of this rule is to establish licensing and regulatory requirements in the State of Utah for a stand-alone prescription drug plan (PDP).~~

~~_____ (a) Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, commonly referred to as the Medicare Modernization Act (MMA), created requirements for a new type of organization called a Prescription Drug Plan (PDP) to provide Medicare Part D benefits.~~

~~_____ (b) Base requirements for contracts with PDP sponsors include state licensure as a risk-bearing entity in the jurisdiction where the entity proposes to serve Medicare Part D beneficiaries.]~~

~~_____ (1) The purpose of this rule is to establish licensing and regulatory requirements for a stand-alone Medicare PDP.~~

~~_____ (2) This rule applies to [all entities-]a person that offers a stand[-]-alone Medicare PDP[~~in the State of Utah~~].~~

R590-235-3. Definitions.

~~[In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:~~

~~_____ (1) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.~~

~~_____ (2) "Stand Alone Medicare Prescription Drug Plan (PDP):"~~

~~_____ (a) means a prescription drug plan, offered by insurers and other private companies to provide Medicare Part D benefits under the Medicare Modernization Act; and~~

~~_____ (b) does not include a Medicare prescription drug plan included in the benefit package offered by a Medicare Advantage company.~~

~~_____ (3) "Medicare Advantage Company" means a company selling a Medicare authorized product replacing Medicare Part A and Part B benefits.]~~Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-620, and Rule R590-146. Additional terms are defined as follows:

~~_____ (1) "Medicare Advantage company" means a company selling a Medicare Advantage plan.~~

~~_____ (2)(a) "Stand-alone Medicare PDP" means a Medicare prescription drug plan offered by an insurer or a private company to provide Medicare Part D benefits.~~

(b) "Stand-alone Medicare PDP" does not mean a Medicare prescription drug plan included in the benefit package offered by a Medicare Advantage company.

R590-235-4. Licensure and Regulatory Requirements.

~~[~~ A PDP may be licensed and regulated as either a Utah domiciled health maintenance organization (HMO), a limited health plan (LHP), or an indemnity insurer, either Utah domiciled or foreign.

~~(1) Regulatory requirements for a Utah domiciled PDP organized as:~~

~~(a) an HMO or LHP are established by Title 31A, Chapter 8;~~

~~(b) an indemnity insurer are established by Title 31A, Chapter 5.~~

~~(2) Regulatory requirements for a foreign indemnity insurer are established by Title 31A, Chapter 14.~~

~~(3) A PDP is required to file Quarterly and Annual Statement Blanks in accordance with the instructions provided by the National Association of Insurance Commissioners (NAIC) and in accordance with Statutory Accounting Principles (SAP).~~

~~(4) A PDP applicant must apply for licensure using the NAIC Uniform Certificate of Authority Application forms:~~

~~(a) Primary Application Form for a domestic insurer PDP; or~~

~~(b) Expansion Application Form for a foreign indemnity insurer PDP.]~~

(1) A stand-alone Medicare PDP sponsor shall be licensed as a risk-bearing entity in the jurisdiction where the sponsor proposes to serve Medicare Part D beneficiaries.

(2) A stand-alone Medicare PDP may be licensed and regulated as either a Utah domiciled health maintenance organization (HMO), a limited health plan, or a Utah domiciled or foreign indemnity insurer.

(a) Regulatory requirements for a Utah domiciled stand-alone Medicare PDP organized as an HMO or limited health plan are established by Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(b) Regulatory requirements for a Utah domiciled stand-alone Medicare PDP organized as an indemnity insurer are established by Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations.

(c) Regulatory requirements for a foreign indemnity insurer are established by Title 31A, Chapter 14, Foreign Insurers.

(3) A stand-alone Medicare PDP shall file Quarterly and Annual Statement Blanks pursuant to the instructions provided by the NAIC and in accordance with statutory accounting principles.

(4) A stand-alone Medicare PDP applicant shall apply for licensure using the appropriate NAIC Uniform Certificate of Authority Application form:

(a) Primary Application Form, for a Utah domiciled insurer stand-alone Medicare PDP; or

(b) Expansion Application Form, for a foreign indemnity insurer stand-alone Medicare PDP.

R590-235-5. ~~Minimum Capital and Surplus Requirements.~~

~~(1) The minimum capital or permanent surplus requirement is:~~

~~(a) \$400,000 for indemnity insurers, whether domestic or foreign;~~

~~(b) \$100,000 for an HMO; and~~

~~(c) for an LHP:~~

~~(i) may not be less than \$10,000 or exceed \$100,000.~~

~~(ii) the actual amount is to be set by the commissioner after a hearing and consideration of various factors.~~

~~(2) Risk Based Capital (RBC) requirements, as outlined in Section 31A-17-602, are applicable regardless of the license type.~~

R590-235-6. Enforcement Date.

~~The commissioner will begin enforcing the provisions of this rule 45 days after adoption.~~

R590-235-7. ~~Severability.~~

[If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.]If any provision of this rule, Rule R590-235, 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: prescription drug plans

Date of Enactment or Last Substantive Amendment: June 7, 2006

Notice of Continuation: April 16, 2021

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