

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-240

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:
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Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R590-240. Procedure to Obtain Exemption of Student Health Programs From Title 31A, Insurance Code

3. Purpose of the new rule or reason for the change:

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:

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 Effective Date section, redistribute provisions from the Review and Findings section to more relevant locations in the rule, 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	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
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-1-103	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	
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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:		11/14/2023
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	11/21/2023
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, 63G-3-302, 63G-3-303, and 63G-3-402. 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.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	09/28/2023

R590. Insurance, Administration.

R590-240. Procedure to Obtain Exemption of Student Health Programs From Title 31A, Insurance Code.

R590-240-1. Authority.

This rule is promulgated ~~and adopted~~ by the commissioner pursuant to ~~Subsection 31A-1-103(3)(d) and Section~~ Sections 31A-1-103 and 31A-2-201.

R590-240-2. Purpose and Scope.

(1) The purpose of this rule is to ~~exempt~~ create a procedure for a student health ~~programs~~ program established by ~~institutions~~ an institution of higher education to obtain an exemption from regulation under ~~the Utah~~ Title 31A, Insurance Code.

~~(2) Health insurance from an insurer made available by an institution to its students is not exempt from provisions of the Utah Insurance Code under this rule, even if:~~

~~(2)(a) This rule applies to a student health program established by an institution of higher education.~~

~~(b) This rule does not exempt from Title 31A, Insurance Code, health insurance from an insurer made available by an institution to its students, even if:~~

~~(i) the insurer's policy is integrated into the overall student health program offered by the institution to its students; or~~

~~(ii) use of the institution's student health center is an integral, or mandatory, part of health care coverage under the insurer's policy.~~

R590-240-3. Definitions.

~~(1) All definitions in Section 31A-1-301 are incorporated by reference.~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

~~(2)(1) "Board" means the~~ ~~State Board of Regents~~ Utah Board of Higher Education established in Section 53B-1-~~103~~402.

~~(3)(2) "Eligible member" means:~~

~~(a) an eligible student;~~

~~(b) a spouse of an eligible student; or~~

~~(c) a child of, dependent of, or child placed for adoption with, an eligible student.~~

~~(4)(3) "Eligible recipient" means:~~

~~(a) an eligible member;~~

~~(b) an officer of the institution~~ ~~'s officers~~, a faculty member, ~~and employees~~ or an employee; or

~~(c) upon application by the institution or the institution's student health center, other persons~~ a person approved by written order of the commissioner.

~~(5)(4) "Eligible student" is as defined by each institution, but shall, at a minimum, require that the student be enrolled with the institution.~~

~~(6) "Health care provider" means a person who provides health care services.~~

~~_____~~ (7) "Health care services" means "health care" as defined in Section 31A-1-301.]

~~(8)~~(5) "Institution" means an institution of higher education or postsecondary educational institute that consists of the following:

- (a) an institution described in Section 53B-1-102; or
- (b) an institution of higher education that has been accredited by the Northwest Commission on Colleges and Universities.

~~(9)~~(6) "Student health center" means a facility that:

- ~~(a)~~ is operated to provide health care services to an eligible [recipients:
 - ~~(a)~~ by that] recipient by an institution or pursuant to a contract with that institution;
 - (b) [that] employs a health care [providers] provider, or contracts with a health care [providers] provider, which may make [referrals] a referral to [other] another health care [providers] provider;
 - (c) is funded, at least in part, by payment from one of the following sources, which payment grants access to the student health center during the period [of time for which] the eligible student is registered:
 - (i) a fee assessed to and paid by each eligible student at registration; or
 - (ii) the tuition paid by the eligible student;
 - (d) may accept insurance payments, or assist [users] a user in completing [claims forms] a claim form for an insurance [claims] claim; and
 - (e) may require an eligible [recipients] recipient to pay[;] an additional fee for:
 - (i) [an additional fee for] each time the student health center is visited;
 - (ii) [an additional fee for] a specialty [services] service;
 - (iii) [an additional fee for] medical equipment; or
 - (iv) [an additional fee for] medication received at the student health center.

~~(10)~~(7)(a) "Student health program" means a plan organized, established, or adopted~~[;]~~ by an institution to provide or arrange for health care services for eligible members.

(b) [A "student"] "Student health program" may include [providing] coverage for:

- (i) [coverage for] limited health care services;
- (ii) [coverage for] health care services on an emergency basis; or
- (iii) [coverage for] health care services by an out-of-area health care [providers] provider under the following situations:

(A) on an emergency basis, where a prudent layperson would expect the absence of immediate medical attention to result in placing the eligible member's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(B) during [periods] a period when the individual is not enrolled in any classes at the institution~~[;]~~ but is still matriculated with the institution~~[. Such periods may include]~~, including time between semesters or quarters, traditional breaks for the summer, or time away from the institution while attending another higher education institution under a plan approved by the institution; and

(C) during [periods] a period when the individual is enrolled in classes at the institution~~[;]~~ but is not living within commuting distance of the institution, such as while participating in an internship program.

~~(11)~~(8)(a) "Supplemental health care services" means health care services provided by the student health program in addition to those available at a student health center.

(b) "Supplemental health care services" includes health care services provided by contract between:

- (i) the institution~~[;]~~; and
- (ii) any of the following or any combination of the following:
 - (A) a healthcare provider;
 - (B) a clinic or other association of health~~[.]~~care providers;
 - (C) a network plan; or
 - (D) an insurer authorized to provide health insurance.

~~[_____]~~ (12) "Utah Insurance Code" means Title 31A, Utah Code Annotated.]

R590-240-4. [Supporting Facts] Findings.

Pursuant to Subsection 31A-1-103(3)(d), the commissioner makes the following findings:

(1) A student health program is an insurer as defined in Section 31A-1-301 and shall comply with the requirements of Title 31A, Insurance Code, unless it is exempted from regulation by statute or this rule.

(2) [Student health programs are offered.] An institution may offer a student health program only to an eligible [members] member at [institutions] the institution. [These institutions have.]

(a) An institution has an interest in providing affordable health care coverage to [their] its students [in order] to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs.

(b) In some instances, an institution may also offer a student health [programs may also be offered to the spouses of students and other dependents of students, as well] program to a spouse or dependent of a student.

(2) Student health programs are.] (3) A student health program is not established to enable [the institutions] an institution to make a profit from providing health care coverage.

(a) Providing or arranging for health care services for [students] a student is not the primary purpose of [institutions; it is only] an institution, but rather incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution. [In addition, the.]

~~_____~~ (b) ~~The economic impact on a health care [providers-]provider~~ directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by an institution providing its students [at institutions] with access to affordable health care coverage through a student health [programs]program.

~~[(3)](4)~~ An institution is either a state institution under the direct control of, and supervised by, the Board, or it ~~[must be-]is~~ accredited by the Northwest Commission on Colleges and Universities.~~[-In order to-]~~

~~_____~~ (a) ~~To be accredited, an institution [must-]shall~~ meet strict accounting standards~~[7]~~ and be able to demonstrate it is financially solid.

~~_____~~ (b) An institution ~~[must therefore-]shall~~ comply with the strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which ~~[would-]include~~ the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program.

~~_____~~ (c) Any shortfall in providing health care services at the student health center ~~[would become-]is~~ the obligation of the institution.

(5) A student health program that operates under Section R590-240-5 and obtains an order of exemption under Section R590-240-6 does not require regulation for the protection of the interests of the residents of this state, and is exempt from Title 31A, Insurance Code.

(6) If an institution assumes any risk of a student health program, the institution shall:

(a) apply for a certificate of authority to conduct the business of an insurer; or

(b) apply to the commissioner for an exemption under this rule.

(7) Health insurance from an insurer made available by an institution to its eligible members is not exempt from Title 31A, Insurance Code, under this rule even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

R590-240-5. Exemption Requirements for a Student Health Program.

~~[-_____ A student health program may be exempted from the provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.]~~

(1) The commissioner may exempt an institution's student health program from Title 31A, Insurance Code, if:

(a) the student health program meets the requirements of this section;

(b) the institution applies for an exemption under Section R590-240-6; and

(c) the commissioner notifies the institution that the exemption is granted.

~~[(4)](2)~~ A student health program ~~[must-]shall~~:

(a) be established by an institution;

(b) have assets that are owned by:

(i) an institution;

(ii) a trust; or

(iii) the trustees, in their fiduciary capacities, of a trust established by an institution; and

(c) be operated by:

(i) an institution; or

(ii) the institution's authorized agent or affiliate.

~~[(2)](3)~~ The primary purpose of the institution ~~[must-]shall~~ be higher education, ~~[and not the providing of-]not providing~~ a student health program.

~~[(3)](4)~~ Payment of covered claims of the student health program ~~[must-]shall~~ be secured by adequate assets:

(a) that are:

(i) secured by being:

(A) pledged;

(B) guaranteed;

(C) contributed;

(D) placed in trust; or

(E) [using-]a combination of Subsections [5(3)(a)(i)(A), 5(3)(a)(i)(B), 5(3)(a)(i)(C), and 5(3)(a)(i)(D)](4)(a)(i)(A) through (4)(a)(i)(D); and

(ii) secured under Subsection [5(3)](4)(a)(i) by:

(A) the student health program;

(B) the institution that organizes, adopts, or establishes the student health program;

(C) the owner of the institution described in Subsection [5(3)](4)(a)(ii)(B);

(D) an affiliate of the entity described in Subsection [5(3)](4)(a)(ii)(C); or

(E) a combination of the entities described in Subsections [5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D)](4)(a)(ii)(A) through (4)(a)(ii)(D); and

(b)(i) in an amount and type [that would be-]required under Title 31A, Chapter 17[-of the Utah Insurance Code], Determination of Financial Condition; or

(ii) as approved by the commissioner by written order; and

(c) under such terms and conditions as the commissioner determines by written order.

~~[(4) The-](5)~~ An institution may not offer a student health program [may not be offered-]to or enroll anyone other than an

eligible member.

~~[(5) The]~~ (6) A student health program ~~[must]~~ shall have a comprehensive legal structure that demonstrates that:

(a) the assets described in Subsection ~~5(3) will be~~ (4) are administered in a fiduciary manner to ~~[assure]~~ guarantee that assets are available to provide eligible health care services and to provide payments to health care providers~~;~~ as outlined in any contracts between the student health program and health care providers;

(b) the student health program ~~[will be]~~ is administered by an experienced administrator; and

(c) the student health program ~~[shall be]~~ is administered according to contracts between:

(i)(A)(I) the student health program;~~or~~

(II) the institution; or

(III) both the student health program and the institution; and

(B) the enrollees; and

(ii)(A)(I) the student health program;~~or~~

(II) the institution; or

(III) both the student health program and the institution; and

(B) health care providers.

~~[(6)(7)]~~ (7) Except for an emergency health care ~~[services,]service~~ or an out-of-area or an out-of-country health care ~~[providers]provider~~, a health care ~~[services for those enrolled in the student health program must]~~ service for an enrollee shall be provided:

(a) at a student health center; or

(b) pursuant to a contract with a health care service ~~[providers]provider~~, by which ~~[those]the~~ health care ~~[providers will provide]provider provides~~ a health care ~~[services]service~~ upon a referral from the student health center.

~~[(7) Any]~~ (8) A supplemental health care ~~[services]service~~ provided by the student health program ~~[must]~~ shall:

(a) be obtained from an insurer authorized to provide health insurance;

(b) be backed by assets ~~[under the conditions set forth in Subsection 5(3)]described in Subsection (4);~~ or

(c) use a combination of Subsections ~~5(7)(a) and 5(7)(b)](8)(a) and (8)(b).~~

~~[(8) The]~~ (9) A student health program ~~[must]~~ shall provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.

~~[(9) The]~~ (10) A student health program or ~~[the]an~~ institution, or both, shall annually provide the department an informational copy of all current policies, booklets, and advertising.

~~[(10) The]~~ (11) A student health program or ~~[the]an~~ institution, or both~~[-must]~~, shall state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance~~[-and the student health program has been exempted from regulation under the Utah]~~ and is exempt from Title 31A, Insurance Code, and ~~[must]~~ shall cite the date, docket number, and title of the docket by which the exemption was granted.

~~[(11) The]~~ (12) A student health program ~~[must]~~ shall reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.

~~[(12) The]~~ (13) A student health program ~~[must]~~ shall provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.

R590-240-6. Procedure for Obtaining Exemption.

(1)(a) An institution ~~[desiring]seeking~~ to have its student health program exempted from ~~[the provisions of the Utah]Title 31A, Insurance Code,~~ shall file with the ~~[Utah Insurance Department]department~~ an application in a form prescribed by the commissioner for an order exempting the student health program, and shall provide verifiable documentation in support of its application, including documentation to support that the exemption requirements in Section R590-240-5 have been met.

(b) The application ~~[must]~~ shall provide assurance that the institution has sufficient assets placed in trust, or otherwise pledged or guaranteed under Section ~~3,]R590-240-5~~ under conditions acceptable to the commissioner, to meet any liability the institution ~~[may have]has~~ for its student health program.

(2) ~~[The]~~ When considering an institution's request for exemption, the commissioner may require the following:

(a) additional evidence or information~~[-to be provided by-]~~ from the institution;

(b) an examination of the institution's student health program by the department, ~~[the costs of which shall be borne by the institution]at the institution's expense;~~ or

(c) a hearing on the application.

(3)(a) Upon a finding that ~~[the]a~~ student health program complies with ~~[the provisions of]~~ this rule, the commissioner may issue an order exempting the student health program from ~~[the provisions of the Utah]Title 31A, Insurance Code.~~

(b) The commissioner may place any restrictions or conditions upon the exemption the commissioner believes to be necessary to protect the interests of the residents of this state.

(4) A student health program is not exempt from ~~[the Utah]Title 31A, Insurance Code,~~ unless the commissioner has issued a written order explicitly stating the student health program is so exempt~~[from the Utah Insurance Code].~~

(5) The department shall retain continuing jurisdiction over ~~[the]an~~ institution's student health program to assure compliance with the terms and conditions in Section R590-240-5, including any changes in the law or the facts upon which the exemption is granted.

(6) Any inconsistencies between this rule and any order previously issued exempting a student health program from Title

31A, Insurance Code, are resolved by incorporating this rule.

~~R590-240-7. Rule and Findings.~~

~~_____ (1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.~~

~~_____ (2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.~~

~~_____ (3) If the institution assumes any risk of the student health program, the institution must:~~

~~_____ (i) apply for authority to conduct the business of an insurer, or~~

~~_____ (ii) apply to the commissioner for an exemption under this rule.~~

~~_____ (4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.~~

~~_____ (5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.~~

~~R590-240-8. Enforcement Date.~~

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

~~]~~

~~R590-240-[9]7. Severability.~~

~~[If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.] If any provision of this rule, Rule R590-240, 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: health insurance exemptions

Date of Last Change: 2023[~~August 8, 2007~~]

Notice of Continuation: June 3, 2022

Authorizing, and Implemented or Interpreted Law: 31A-1-103; 31A-2-201

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