

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:

R590-266

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:
R590-266. Utah Essential Health Benefits Package
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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 Penalties section, 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	Section 31A-2-212	

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: **05/31/2023**

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: **06/07/2023**

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, 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:	04/14/2023
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R590. Insurance, Administration.

R590-266. Utah Essential Health Benefits Package.

R590-266-1. Authority.

This rule is promulgated by the commissioner pursuant to ~~[Subsections 31A-2-201(3)(a) and 31A-2-212(5) wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah]~~ Sections 31A-2-201 and 31A-2-212.

R590-266-2. Purpose and Scope.

(1) The purpose of this rule is to designate an essential health benefits package ~~[in Utah]~~ as required by ~~[Section 1302 of the Patient Protection and Affordable Care Act of 2010, the Health Care Education Reconciliation Act of 2010, and related federal regulations and guidance (PPACA)]~~ PPACA.

(2) This rule applies to ~~[all]~~ a non-grandfathered individual ~~[and]~~ or small employer health benefit plan[s] issued or renewed on or after January 1, 2014.

R590-266-3. Definitions.

~~[In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103. Additional terms are defined as follows:

(1) "Essential health benefits" means the following health care service categories ~~[that must be included in non-grandfathered individual and small employer health benefit plans beginning January 1, 2014]:~~

- (a) ambulatory patient services;
- (b) emergency services;
- (c) hospitalization;
- (d) pregnancy, maternity, and newborn care;
- (e) mental health and substance use disorder services, including behavioral health treatment;
- (f) prescription drugs;
- (g) rehabilitative and habilitative services and devices;
- (h) laboratory services;
- (i) preventive and wellness services and chronic disease management; and
- (j) pediatric services, including oral and vision care.

(2) "Grandfathered health plan" means an individual or small employer health benefit plan that:

- (a) was in existence when the PPACA was enacted on March 23, 2010;
- (b) has not had any significant changes that reduce benefits or increase costs to the consumer including:
 - (i) a significant cut or reduction in benefits ~~[, such as excluding coverage for people with diabetes];~~

- (ii) an increase in co-pays by more than \$5, adjusted annually for medical inflation, or a percentage equal to medical inflation plus 15%;
 - (iii) ~~the~~ an employer ~~reduces~~ reduction in contributions by more than five percentage points; or
 - (iv) ~~reducing~~ a reduction of annual dollar limits, or ~~adding~~ addition of a new limit; and
 - (c) the insured has received notification from the ~~carrier~~ insurer that their health benefit plan is a grandfathered plan.
- (3)(a) "Habilitative" means health care services that help a person keep, learn, or improve skills and functioning for daily living.

(b) Habilitative services may include:

(i) physical therapy~~[-]~~;

(ii) occupational therapy~~[-]~~;

(iii) speech-language pathology~~[-and-]~~; or

(iv) other services.

(4) "Non-~~G~~Grandfathered health plan" means an individual or small employer health benefit plan:

(a) that is issued after the PPACA was enacted on March 23, 2010; or

(b) a grandfathered health plan that has made significant changes that:

(i) reduce benefits or increase costs to the consumer[s that has-]; and

(ii) caused the plan to lose the grandfathered status as provided in Subsection (2)(b).

(5) "Rehabilitative" means the treatment of disease, injury, developmental delay, or other cause, by physical agents and methods to assist in the rehabilitation of normal physical bodily function, that is goal-oriented and where the person has potential for functional improvement and ability to progress.

(6) "Utah ~~Essential Health Benefits Package~~ essential health benefits package" means the benefits designated in this rule by the commissioner as essential health benefits ~~[in non-grandfathered plans for the purposes of the PPACA in Utah]~~.

R590-266-4. Utah Essential Health Benefits.

(1)(a) The ~~commissioner hereby designates the~~ PEHP Utah Basic Plus 2013 plan is designated as the Utah ~~Essential Health Benefits Package for purposes of the PPACA in Utah~~ essential health benefits package.

(b) The PEHP Utah Basic Plus 2013 Plan ~~[as incorporated herein and]~~ is available at <https://insurance.utah.gov/consumer/health/reform>.

(c) The PEHP Utah Basic Plus 2013 Plan was issued on July 1, 2013~~[-Some-]~~, and some of the benchmark plan benefits may not comply with current state or federal requirements.

(2)(a) Except as provided in Subsections (2)(b) and (2)(c), an individual or small employer ~~carrier~~ insurer who issues or renews a non-grandfathered plan on or after January 1, 2014, must include at ~~[a minimum]~~ least the benefits of the Utah ~~Essential Health Benefits Package~~ essential health benefits package.

(b) ~~[A carrier]~~ An insurer may substitute coverage provided in the Utah ~~Essential Health Benefits Package as long as substitutions are~~ essential health benefits package if the substitution is actuarially equivalent and complies with ~~[the standards set forth in]~~ 42 CFR 457.431.

(c) A health benefit plan may exclude the pediatric dental essential health benefit if there is at least one ~~carrier~~ insurer offering a certified stand-alone dental plan that provides the pediatric dental essential health benefit in the PEHP Utah Basic Plus 2013 Plan.

(3) ~~[This rule does not prohibit an]~~ An individual or small employer ~~carrier from offering~~ insurer may offer a non-grandfathered plan with benefits in addition to the Utah ~~Essential Health Benefits Package~~ essential health benefits package.

R590-266-5. ~~Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~R590-266-6.~~ Severability.

~~[If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.]~~ If any provision of this rule, Rule R590-266, 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: essential health benefit, insurance

Date of Last Change: January 10, 2018

Notice of Continuation: October 14, 2022

Authorizing, and Implemented or Interpreted Law: 31A-30-201(3)(a); 31A-2-212(5)