

**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:**

**R590-268**

**Filing ID: Office Use Only**

**Agency Information**

|                             |                                    |                 |
|-----------------------------|------------------------------------|-----------------|
| <b>1. Department:</b>       | Insurance                          |                 |
| <b>Agency:</b>              | Administration                     |                 |
| <b>Room number:</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 persons:</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**

**2. Rule or section catchline:**

R590-268. Small Employer Stop-Loss Insurance

**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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**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**

| <b>Fiscal Cost</b>           | <b>FY2023</b> | <b>FY2024</b> | <b>FY2025</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>       | <b>FY2023</b> | <b>FY2024</b> | <b>FY2025</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>    |

**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-43-304 |  |
|                   |                    |  |
|                   |                    |  |

**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*):

|   |  |
|---|--|
| <b>Official Title of Materials Incorporated (from title page)</b> |  |
| <b>Publisher</b>  |  |
| <b>Issue Date</b>   |  |
| <b>Issue or Version</b>   |  |

**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>Official Title of Materials Incorporated (from title page)</b> |  |
| <b>Publisher</b>  |  |

|                         |  |
|-------------------------|--|
| <b>Issue Date</b>       |  |
| <b>Issue or Version</b> |  |

**Public Notice Information**

|   |                          |                    |
|---|--------------------------|--------------------|
| <b>8. 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>  |                          | <b>05/01/2023</b>  |
| <b>B) A public hearing (optional) will be held:</b>   |                          |                    |
| <b>On (mm/dd/yyyy):</b>   | <b>At (hh:mm AM/PM):</b> | <b>At (place):</b> |
|   |                          |                    |
|   |                          |                    |
|   |                          |                    |

|   |                   |
|---|-------------------|
| <b>9. This rule change MAY become effective on:</b>   | <b>05/08/2023</b> |
| 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**

|  |   |              |                   |
|--|---|--------------|-------------------|
| <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> | <b>03/06/2023</b> |

**R590. Insurance, Administration.**

**R590-268. Small Employer Stop-Loss Insurance.**

**R590-268-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-43-304 [~~wherein the commissioner may make rules to implement Title 31A, Chapter 43~~].

~~**R590-268-2. Scope.**~~

~~This rule applies to all small employer stop loss contracts issued or renewed on or after July 1, 2013.~~

~~**R590-268-3. Purpose.**~~

~~The purpose of this rule is to provide the content of the stop loss insurance disclosure, prohibit lasering, and establish the form and manner of form and rate filings and of the annual actuarial certification and report on stop loss experience.~~

~~]~~

**R590-268-2. Purpose and Scope.**

- (1) The purpose of this rule is to:
  - (a) provide the content of a stop-loss insurance policy disclosure;
  - (b) define prohibited lasering practices; and
  - (c) establish the procedure for filing:
    - (i) a rate and form filing and;
    - (ii) a report filing, including:
      - (A) the insurer's stop-loss experience;
      - (B) an actuarial certification of compliance; and
      - (C) an actuarial memorandum regarding the actuarial certification of compliance.
- (2) This rule applies to an insurer marketing or offering a small employer stop-loss contract.

**R590-268-[4]3. Definitions.**

[~~For the purposes of this rule, the commissioner adopts the definitions of Sections 31A-1-301 and 31A-43-102.~~] Terms used in this rule are defined in Sections 31A-1-301 and 31A-43-102. Additional terms are defined as follows:

- (1) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards.
- (2) "SERFF" means the System for Electronic Rate and Form Filing.

#### **R590-268-~~5~~4. Stop-Loss Insurance Disclosure.**

(1) ~~[Stop-loss insurers marketing]~~ An insurer offering stop-loss insurance to a small employer[s] shall use the Utah Stop-Loss Disclosure dated July 1, 2019, available on the department's website, <https://insurance.utah.gov>[-

~~(a) the Utah Stop Loss Disclosure dated January 15, 2014, prior to the effective date of this rule; and~~

~~(b) the Utah Stop Loss Disclosure dated July 1, 2019, after the effective date of this rule].~~

(2) ~~[The stop-loss]~~ An insurer may display the insurer's name, identifying logo, and address on the disclosure.

~~[(3) The disclosures are available on the Department's website at <https://insurance.utah.gov>.]~~

~~[(4)](3)~~ The disclosure may be altered ~~[for reasons specifically approved by]~~ upon approval of the commissioner.

#### **R590-268-~~6~~5. Lasering.**

~~[(1) Subsection 31A-43-301(2)(a) prohibits lasering. For the purpose of this rule lasering includes]~~ The following lasering practices are prohibited under Section 31A-43-301:

~~[(a)](1)~~ assigning a different attachment point for an individual based on the individual's expected claims or a given diagnosis;

~~[(b)](2)~~ assigning a deductible to an individual that must be met before stop-loss coverage applies;

~~[(c)](3)~~ denying stop-loss coverage to an individual who is otherwise covered by the small employer's ~~[medical]~~ health plan; and

~~[(d)](4)~~ applying an actively at work exclusion to stop-loss coverage.

#### **R590-268-~~7~~6. Form and Rate Filings.**

~~[(1) A contract filing consists of one contract form, any related documents, disclosure, rate manual, and actuarial memorandum.]~~

~~(1) An insurer shall file a stop-loss insurance contract and application with:~~

~~(a) any related documents;~~

~~(b) if altered, a disclosure as outlined in Section R590-268-4; and~~

~~(c) a rate manual with an actuarial memorandum as outlined in Section R590-268-7.~~

(2) A new or a revised rate ~~[manual]~~ filing shall:

(a) include;

(i) a summary of ~~[how]~~ the rate ~~[is calculated]~~ calculation;

~~[(b) contain specific]~~ (ii) geographic rating area factors applicable in Utah;

~~[(c) be filed 30 days prior to use;~~

~~[(d) be applied in the same manner for all small employer stop-loss contracts;]~~

~~[(e) describe]~~ (iii) a description of how the overall rate is ~~[reviewed for compliance]~~ compliant; and

~~[(f) include]~~ (iv) an actuarial certification signed by a qualified actuary; and

(b) be filed no later than 30 days before use.

(3) A stop-loss contract shall be consistently applied to each small employer.

(4) ~~[All filings]~~ A filing shall be submitted using SERFF.

#### **R590-268-~~8~~7. Annual ~~[Actuarial Memorandum and]~~ Certification.**

(1) ~~[The]~~ An insurer shall, on or before April 1, submit ~~[annually on or before April 1]~~ the following using SERFF:

(a) stop-loss experience as described in Subsections (2) and (3) for the previous two years~~[-for Utah];~~

(b) an actuarial certification of compliance with ~~[requirements of section 31A-43-301]~~ Title 31A, Chapter 43, Small Employer Stop-Loss Insurance Act; and

(c) an actuarial memorandum, describing the review done ~~[in preparation of]~~ to prepare the actuarial certification.

~~[(2) The]~~ (2)(a) An insurer's stop-loss experience shall be presented by:

(i) small employer; and

(ii) experience year~~[-and shall include:];~~

(b) An insurer's stop-loss experience shall include:

~~[(a)](i)~~ a group identifier that uniquely identifies the employer group and is consistent from year to year for the same employer group;

~~[(b)](ii)~~ the effective date of coverage for ~~[the]~~ each policy year~~[-for the employer group];~~

~~[(c) contract type (e.g. 12/24)](iii)~~ the contract term;

~~[(d)](iv)~~ the employer size, including ~~[both covered lives count and employee count as of]~~ number of covered lives and employees, at the beginning of the contract;

~~[(e)](v)~~ the number of covered lives ~~[exposure years]~~ and employee exposure years for the period of the experience~~[-time period];~~

~~[(f)](vi)~~ the specific attachment point;

~~[(g)](vii)~~ expected claims ~~[in the absence of]~~ absent stop-loss insurance;

~~[(h)](viii)~~ expected claims under the specific attachment point;

~~[(i)](ix)~~ the aggregate attachment point;

~~[(j)](x)~~ earned premium; and

~~[(k)](xi)~~ claims paid by the stop-loss insurance ~~[broken out]~~ separated by specific losses and aggregate losses.

(c) An insurer's stop-loss experience shall:

(i) be aggregated over the entire contract period, rather than aggregated by month; and

~~(ii) only include stop-loss contracts where the final claim date is contained within the two calendar years before the submission date.~~

~~(d) Runout claims that are paid after the submission date shall be updated in the following years' experience submission.~~

~~[(3)(a)(i) The ](3) An insurer's stop-loss experience shall be submitted [in Excel format] using the Utah Stop-Loss Experience Report dated July 1, 2019, available on the department's website, <https://insurance.utah.gov>.~~

~~[(ii) The Utah Stop Loss Experience Report dated July 1, 2019, is available on the Department's website at <https://insurance.utah.gov>.~~

~~(b) Experience shall be aggregated over the entire contract incurral period, rather than aggregated by incurral month.~~

~~(c) The experience report shall only include those stop loss contracts where the final claim incurral date is contained within the two calendar years previous to the submission date.~~

~~(d) Runout claims that are paid after the submission date shall be updated in the following year's experience submission.~~

**~~R590-268-9. Penalties.~~**

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

**~~R590-268-[10]8. Severability.~~**

~~[If any provision of this rule or its application to any person or situation is held to be 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 R590-268, 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: small employer stop-loss**

**Date of Enactment or Last Substantive Amendment: June 21, 2019**

**Notice of Continuation: March 7, 2019**

**Authorizing, and Implemented or Interpreted Law: 31A-43-304; Title 31A, Chapter 43**