

State of Utah
Administrative Rule Analysis
 Revised December 2019

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-277-4	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:		
Agency:	Insurance Department	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N. State St.	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
Prohibited Policy Provisions
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The rule is being amended to allow an insurer to exclude from coverage losses that come as a direct result of an insured driving under the influence.
4. Summary of the new rule or change:
The rule adds a subsection that allows insurers to exclude from coverage losses that come as a direct result of an insured driving under the influence. The subsection sets forth the parameters for such exclusions.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The amendment simply allows insurers to use an additional exclusion in their contracts.
B) Local governments:
There is no anticipated cost or savings to local governments. The amendment simply allows insurers to use an additional exclusion in their contracts.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The amendment simply allows insurers to use an additional exclusion in their contracts.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

An insurer that chooses to exclude from coverage losses related to a person driving under the influence may see a positive fiscal impact. However, the Department is aware of only one insurer that expects to use this exclusion, and the insurer did not have any losses that would be affected by this change in the past five years.

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**):

An individual who operates a vehicle while under the influence of alcohol or drugs may be denied coverage for any losses sustained as a result of an accident that occurs while operating the vehicle.

F) Compliance costs for affected persons:

There are no compliance costs for any affected persons. An insurer may elect to submit a filing to the Department to change their forms to apply the exclusion, but there is no cost to submit a filing to the Department. The insurer will likely have minimal administrative costs due to creating the filing, but the Department cannot estimate what those costs will be.

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	FY2020	FY2021	FY2022
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			
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 approval of regulatory impact analysis:

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Todd E. Kiser, Insurance Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 31A-2-201(3)(a)	Section 31A-2-202	Subsection 31A-23a-402(8)
Subsection 31A-23a-412	Section 31A-45-103	

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*):

First Incorporation

Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
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*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 04/14/2020

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

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

10. This rule change MAY become effective on (mm/dd/yyyy): 04/21/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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	Date (mm/dd/yyyy):	02/20/2020
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R590. Insurance Administration.

R590-277. Managed Care Health Benefit Plan Policy Standards.

R590-277-4. Prohibited Policy Provisions.

(1) A health benefit plan may not impose any preexisting condition limitation or exclusion provisions.

(2) Limitations or exclusions. Unless otherwise required by law, a policy may not limit or exclude coverage or benefits by type of illness, accident, treatment, or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges;
- (d) administrative exams and services;
- (e) applied behavioral analysis therapy, except as required by Section 31A-22-642;
- (f) aviation;
- (g) axillary hyperhidrosis;
- (h) benefits provided under:
 - (i) Medicare or other governmental program, except Medicaid;
 - (ii) state or federal worker's compensation; or
 - (iii) employer's liability or occupational disease law;
- (i) fitness training, exercise equipment, or membership fees to a spa or health club;
- (j) charges for appointments scheduled and not kept;
- (k) chiropractic care;
- (l) complementary and alternative medicine;
- (m) corrective lenses, and examination for the prescription or fitting thereof, except lens implant following cataract surgery and as required by Rule R590-266;

(n) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved party; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

- (o) custodial care;
- (p) dental care or treatment;
- (q) dietary products, except as required by Rule R590-194;
- (r) educational and nutritional training, except as required by Rule R590-200;
- (s) experimental or investigational services;
- (t) expenses before coverage begins or after coverage ends;
- (u) felony, riot or insurrection, when it has been determined the covered person was a voluntary participant;
- (v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

- (x) gender reassignment, except as required by Section 1557 of the Patient Protection and Affordable Care Act;
- (y) gene therapy;
- (z) genetic testing;
- (aa) hearing aids, and examination for the prescription or fitting thereof;
- (bb)(i) except as provided in Subsection R590-277-4(2)(cc), a loss directly related to the insured's voluntary participation in an activity where the insured:

- (A) is found guilty of an illegal activity in a criminal proceeding; or
- (B) is found liable for the activity in a civil proceeding.
- (ii) A guilty finding includes a plea of guilty, a no contest plea, and a plea in abeyance;
- (cc)(i) a loss directly related to the insured or dependent violating:

- (A) Section 41-6a-502; or
- (B) a law that prohibits operating a motor vehicle, in a state other than Utah, while exceeding the legal limit of concentration of alcohol, drugs, or a combination of both in the blood;

(ii) Violations of Subsection R590-277-4(2)(cc)(i) shall be established:

- (A) in a criminal proceeding in which the insured or dependent is found guilty, enters a no contest plea or a plea in abeyance, or enters into a diversion agreement; or
- (B) a managed care organization's request for an independent review where the findings support a decision to deny coverage based on the exclusions of Subsection R590-277-4(2)(cc)(i);

(iii) For purposes of Subsection R590-277-4(2)(cc):
(A) An independent review means a process that:
(I) is conducted by an independent entity designated by the managed care organization;
(II) renders an independent and impartial decision on a decision to deny coverage based on the exclusion in Subsection R590-277-4(2)(cc)(i); and
(III) is paid for by the insurer.
(B) The independent review entity may not have a material professional, familial, or financial conflict of interest with:
(I) the managed care organization;
(II) an officer, director, or management employee of the managed care organization;
(III) the enrollee;
(IV) the enrollee's health care provider;
(V) the health care provider's medical group or independent practice association; or
(VI) a health care facility where services were provided;
(iv) this exclusion does not apply to an insured or dependent who is under 18 years of age:
(dd) infertility services;
(~~dd~~ee) mental health and substance use disorder services, except as required by Section 31A-22-625 and Rule R590-266;
(~~ee~~ff) injury as a result of a motor vehicle, to the extent the covered person is required by law to have no-fault coverage. The exclusion applies only to charges up to the minimum coverage required by law, whether or not such coverage is in effect;
(~~ff~~gg) nuclear release;
(~~gg~~hh) refractive eye surgery;
(~~hh~~ii) rehabilitation or habilitative therapy services, such as physical, speech, and occupational, except as required to correct an impairment caused by a covered accident or illness, or as required by Rule R590-266;
(~~ii~~jj) respite care;
(~~jj~~kk) rest cures;
(~~kk~~ll) service in the armed forces or units auxiliary to it;
(~~ll~~mm) services that are not medically necessary;
(~~mm~~nn) services performed by the covered person's parent, spouse, sibling or child, including a step or in-law relationship;
(~~nn~~oo) services for which no charge is normally made in the absence of insurance;
(~~oo~~pp) services in connection with a prearranged surrogacy agreement where the covered person relinquishes a baby and receives payment or other compensation arising out of such services. This exclusion does not apply to services for the baby;
(~~pp~~qq) sexual dysfunction procedures, equipment and drugs;
(~~qq~~rr) shipping and handling;
(~~rr~~ss) telephone/electronic consultations;
(~~ss~~tt) territorial limitations outside the United States;
(~~tt~~uu) terrorism, including acts of terrorism;
(~~uu~~vv) transplants, except as required by Rule R590-266;
(~~vv~~ww) transportation, except medically necessary ambulance services;
(~~ww~~xx) war or act of war, whether declared or undeclared; or
(~~xx~~yy) others that in the opinion of the commissioner are not inequitable, misleading, deceptive, obscure, unjust, unfair or unfairly discriminatory to the policyholder, beneficiary, or covered person under the policy.

KEY: insurance, health insurance

Date of Enactment or Last Substantive Amendment: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 31A-45-103; 31A-2-201(3)(a); 31A-23a-402(8); 31A-23a-412; 31A-2-202