

State of Utah
Administrative Rule Analysis
Revised November 2021

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.):	R590-283	Filing ID (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	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 person(s):		
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:
R590-283. Defrayal of State-Required Benefits
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being changed to better reflect actual defrayal payment practice and to modify the formula for determining how much a carrier receives in defrayal of state mandated benefits. In addition, 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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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 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 clearer, add definitions for "Defrayal payment" and "Member month," switch the order of two sections for clarity, and update the Severability section to use the department's current language.
Language was added to clarify that no carrier may receive more in defrayal payments than the carrier actually expended during the calendar year.
The calculation of the defrayal payment was modified to be based on a per member per month basis rather than a per member per year basis. The state is required to reimburse based on average costs (Section 31A-30-118) and a per member per month calculation more accurately distributes the costs to the carrier that expended them.
Language was added to clarify that for reporting and for requests for defrayal payments, the carrier allowed amount as well as the carrier incurred amount must be reported. The original language only required the carrier incurred amount. Having the allowed amount makes it easier for the state to estimate the complete year defrayal payment liability while taking into account probable patterns of deductible and maximum out of pocket completion. In practice, carriers have already been providing the allowed amount; the language now codifies the practice.

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?):

The department anticipates that affected carriers will need to make a minor coding change to reflect monthly membership counts rather than annual membership counts. This compliance cost for this change should not be in any way material.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

6. A) 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	FY2022	FY2023	FY2024
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

B) Department head approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

7. 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-30-118	

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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; <i>if none, leave blank</i>):	
	First Incorporation
Official Title of Materials Incorporated (from title page)	Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard
Publisher	Utah Health Information Network
Date Issued	02/02/2019
Issue, or version	3.1

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; <i>if none, leave blank</i>):	
	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. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy):	01/31/2022	
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):	02/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

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 <i>Utah State Bulletin</i> and delaying the first possible effective date.		
Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy): 12/08/2021

R590. Insurance, Administration.

R590-283. Defrayal of State-Required Benefits.

R590-283-1. Authority.

This rule is promulgated by the commissioner pursuant to [~~Subsections 31A-2-201(3)(a) and 31A-30-118(4)~~Sections 31A-2-201 and 31A-30-118.

R590-283-2. Purpose and Scope.

(1) The purpose of this rule is to establish the method and timing [~~of defraying~~for the defrayal] of the cost of a state-required benefit

enacted on or after January 1, 2012, that is subject to 45 CFR 155.170 of [~~the Patient Protection and Affordable Care Act~~]PPACA.

(2) This rule applies to a ~~any~~ health benefit plan that:

- (a) is a qualified health plan;
- (b) is offered on the exchange in the individual or small group market;
- (c) has an effective date of coverage on or after January 1, 2020; and
- (d) offers a state-required benefit in excess of the Utah Essential Health Benefits Package[~~-~~];

~~_____~~ (3) A health benefit plan offering a state-required benefit that is offered exclusively off-exchange is not eligible for defrayal of state mandated benefits].

R590-283-3. Definitions.

[~~For the purposes of this rule, the commissioner adopts the definitions of Sections 31A-1-301, 31A-30-103, and Rule R590-266, and the following definitions~~]Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103, and Rule R590-266. Additional terms are defined as follows:

(1) "Defrayal payment" means the amount payable to a carrier from the state for expenses incurred for a state-required benefit under:

- (a) 45 C.F.R. 155.170(b);
- (b) Section 31A-30-118; and
- (c) this rule.

(2) "EHB" means essential health benefits.

~~_____~~ ([2]3) "Exchange" means [~~the federal exchange, www.healthcare.gov, that makes qualified health plans available to qualified individuals or employers~~]exchange as defined in 45 CFR 155.20.

~~_____~~ ([3]4) "Member month" means a count of one for each month during a calendar year during which an individual has coverage under a plan subject to this rule where coverage is evaluated on the first of the month.

(5) "Qualified health plan" means a qualified health plan as defined in 45 CFR 155.20.

~~_____~~ ([4]6) "State-required benefit" means a benefit required by the state:

- (a) on or after January 1, 2012[~~-~~];
- (b) for a purpose other than [~~for purposes of~~]compliance with a federal requirement[~~-~~];
- (c) that is in excess of the Utah Essential Health Benefits Package; and
- (d) that is eligible for a defrayal payment.

R590-283-4. [~~Unified Rate Review Template (URRT), Rate Data Template (RDT), and Plans and Benefits Template (PBT) Modifications.~~

~~_____~~ A carrier who is eligible to receive defrayal for a state required benefit shall modify the federal rate filing template as follows:

~~_____~~ (1) a carrier shall exclude the amount the state will defray from the rates submitted on both the URRT[, as well as] and the RDT;

~~_____~~ (2) a carrier shall indicate in the rate filing's actuarial memorandum:

- (a) whether [~~or not~~]the carrier anticipates a defrayal from the state for the cost of an eligible state required benefit;
- (b) that the cost of the state required benefit is not included in the premiums; and
- (c) detail regarding the amount the carrier expects to receive from the state for defrayal of the state required benefit.

~~_____~~ (3) a carrier [~~shall~~]may not factor [~~the~~]any state required benefit[s] into the calculation for the "EHB Percent of Total Premium" field on the PBT[~~-~~]; a carrier should treat the state required benefit as if it does not exist for purposes of this field, so that [~~the~~]no state required benefit[s] are excluded from [~~is~~]included in the total premium from which the EHB percent of premium is calculated; and

~~_____~~ (4) a carrier shall indicate in the "Benefits Information" field on the PBT that they cover the state required benefits, marking the state required benefit as "Not EHB" as the "EHB Variance Reason."

R590-283-5.]Defrayal of a State-Required Benefit[s].

(1) A health benefit plan offering a state-required benefit that is offered exclusively off-exchange is not eligible for a defrayal payment.

(2) A carrier seeking a [~~state required benefit~~]defrayal payment shall, on or before April 30[~~th~~] of each year, [~~starting on April 30, 2021,~~]submit to the commissioner a request that includes the following information:

- (a) the state-required benefit for which the carrier is seeking a defrayal payment[~~-is sought~~];
- (b) the [~~count~~]total member months of individuals who received [~~services for the~~]state-required benefit services during the preceding calendar year; and
- (c) the amount allowed and the amount incurred and paid by the carrier for the state-required benefit services during the preceding calendar year.

~~_____~~ ([2]3)(a) The total defrayal payments [~~shall be~~]are based on an aggregate of the data received under Subsection ([1]2) from all carriers.

(b) The defrayal payment [~~to a carrier~~]is calculated based on the sum of the total state-required benefit defrayable costs incurred across all carriers divided by the sum of the total [~~count~~]member months of individuals receiving [~~defrayable~~]state-required benefit services across all carriers[~~-The~~], and the result [~~will be~~]is multiplied by the sum of the [~~count~~]member months of individuals receiving [~~defrayable~~]state-required benefit services for each carrier.

(c) A carrier may not receive a defrayal payment in excess of the amount the carrier incurred for a state-required benefit during the preceding calendar year.

([3]4) [~~R~~]A request[s] for defrayal payment shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

([4]5) [~~State required~~]Each defrayal payment[s-are] is paid in arrears for the prior calendar year.

([5]6)(a) If legislative funding is less than the total amount of requested defrayal[s] payments, [~~all~~]each defrayal payment[s] will be prorated.

(b) A carrier may include an adjustment to the next pricing year's rates to account for a legislative funding deficit.

(c) An[y] adjustment shall be clearly delineated in the actuarial memorandum.

R590-283-5. Unified Rate Review Template, Rate Data Template, and Plans and Benefits Template Modifications.

(1) A carrier that expects to be eligible to receive a defrayal payment shall modify a federal rate filing template as follows:

(a) exclude the expected defrayal payment from the rates submitted on both the Unified Rate Review Template and the Rate Data Template;

(b) indicate in the rate filing's actuarial memorandum:

(i) whether the carrier anticipates a defrayal payment from the state for the cost of an eligible state-required benefit;

(ii) that the cost of the state-required benefit is not included in the premiums; and

(iii) the defrayal payment amount the carrier expects to receive; and

(c) indicate in the "Benefits Information" field on the Plans and Benefits Template that the carrier covers the state-required benefits, selecting the state-required benefit of "Not EHB" for the "EHB Variance Reason" field.

(2)(a) A carrier may not factor a state-required benefit into the calculation for the "EHB Percent of Total Premium" field on the Plans and Benefits Template.

(b) A state-required benefit may not be included in the total premium from which the "EHB Percent of Total Premium" field is calculated.

R590-283-6. Reporting.

(1) This rule incorporates by reference the Utah Health Information Network's[~~UHIN~~] (UHIN) "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1[~~. The standard~~], which is available on the [~~D~~]department's website at <https://insurance.utah.gov> or on UHIN's website at <https://uhin.org>.

(2) A carrier shall use the UHIN "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1 to identify and report state-required benefit claims subject to defrayal under R590-283-[~~5(1)~~]4(2)(c) and this section.

(3) [~~For the commissioner's~~]To project the state's defrayal [~~costs~~]payments, a carrier anticipating a defrayal payment shall submit to the commissioner:

(a) on or before April 15[~~th~~] of each year[~~, starting on April 15, 2020~~];

(i) the state-required benefit for which the carrier is seeking a defrayal payment[~~is sought~~];

(ii) the [~~count~~]total member months of individuals who received services for the state-required benefit during the current calendar year; and

(iii) the amount allowed and the amount incurred and paid by the carrier for the state-required benefit during the current calendar year.

(b) on or before November 15[~~th~~] of each year[~~, starting on November 15, 2020~~];

(i) the state-required benefit for which the carrier is seeking a defrayal payment[~~is sought~~];

(ii) the [~~count~~]total member months of individuals who received services for the state-required benefit during the current calendar year; and

(iii) the amount allowed and the amount incurred and paid by the carrier for the state-required benefit during the current calendar year.

(c) Reports shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

R590-283-7. Claims Auditing.

The commissioner may audit a carrier's:

(1) [~~a carrier's~~]state-required benefit claims that are [~~subject to~~]eligible for a defrayal payment; and

(2) [~~a carrier's~~]process for determining which state-required benefit claims are [~~subject to~~]eligible for a defrayal payment.

R590-283-8. Penalties.

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

R590-283-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule for applicable policies issued or renewed on or after January 1, 2020.

R590-283-10. 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 R590-283, 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: insurance

Date of Enactment or Last Substantive Amendment: December 23, 2019

Authorizing, and Implemented or Interpreted Law: 31A-30-118(4)