

**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:**

**R590-283**

**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:**

R590-283. Defrayment of State-Required Benefits

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

The rule is being changed to institute additional reporting requirements and change the date that a mandate defrayment payment is made by the state. This will allow the Insurance Department to more accurately predict costs to the state for the defrayment payment, and will provide the legislature the ability to budget up front for the costs each fiscal year.

**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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**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 rule changes update the defrayment request due date, update the information to be included in a request for defrayment, provide more specificity and an example regarding when defrayment payments will be made, and provide specific dates for required reporting.

Virtual Meeting ID:  
September 19, 2022, 1:00 PM  
meet.google.com/kte-eogh-msx  
Phone: 575-904-0792  
PIN: 486 569 481#

**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 will help the legislature more accurately budget state expenses.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The rule governs the relationship between the department and insurers licensed by it. It does not affect local governments in any way.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

There is no anticipated cost or savings to small businesses. The rule governs the relationship between the department and insurers licensed by it, of which none have 1-49 employees. It does not affect small businesses in any way.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There are currently four insurers affected by this rule change. Each insurer will have to compile information and submit two additional filings per year. These filings include the same data that is currently reported. The cost to submit a filing is \$17. We estimate that the additional costs for an insurer to compile the reporting information an additional two times per year is \$1,000 since the information is already being collected and the rule change only increases the frequency with which insurers will submit the data. (4 x \$1,017 x 2 = \$8,136).

**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 person. The rule governs the relationship between the department and insurers licensed by it. It does not affect any other person in any way.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are currently four insurers affected by this rule change. Each insurer will have to compile information and submit two additional filings per year. These filings include the same data that is currently reported. The cost to submit a filing is \$17. We estimate that the additional costs for an insurer to compile the reporting information an additional two times per year is \$1,000 since the information is already being collected and the rule change only increases the frequency with which insurers will submit the data. (4 x \$1,017 x 2 = \$8,136).

**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.)

<b>Regulatory Impact Table</b>			
<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	\$8,136	\$8,136	\$8,136
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$8,136</b>	<b>\$8,136</b>	<b>\$8,136</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-22-642	Section 31A-30-118

**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**

**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.)

<b>A) Comments will be accepted until:</b>	<b>10/17/2022</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>
09/19/2022	01:00 PM	See details above in Box 4

<b>9. This rule change MAY become effective on:</b>	<b>10/24/2022</b>
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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.

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	<b>09/01/2022</b>
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**R590. Insurance, Administration.**

**R590-283. Defrayal of State-Required Benefits.**

**R590-283-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-22-642, and 31A-30-118.

**R590-283-2. Purpose and Scope.**

(1) The purpose of this rule is to establish the method and timing 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 PPACA.

(2) This rule applies to a 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.

**R590-283-3. 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.
- (3) "Exchange" means exchange as defined in 45 CFR 155.20.
- (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.
- (6) "State-required benefit" means a benefit required by the state:
  - (a) on or after January 1, 2012;
  - (b) for a purpose other than 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. Defrayal of a State-Required Benefit.**

- (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 defrayal payment shall, on or before ~~April 30~~ September 1 of each year, 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;
  - (b) ~~the total member months of individuals who received 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.~~ the Mandate Defrayal Data template with the final data submission tab completed;
  - (c) an explanation for any increase in the allowable amount in the per unit cost for each CPT code that increased more than 5%;
  - (d) a description of any treatment plan review under Subsection 31A-22-642(6); and
  - (e) a certification stating:
    - (i) any durational limit, amount limit, deductible, copayment, and coinsurance for the treatment of autism spectrum disorder are similar to, or identical to, coverage provided for other illnesses or diseases; and
    - (ii) the defrayal payment request complies with Subsection 31A-30-118(1)(b).
- (3)(a) The total defrayal payments are based on an aggregate of the data received under Subsection (2) from all carriers.
- (b) The defrayal payment 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 member months of individuals receiving state-required benefit services across all carriers, and the result is multiplied by the sum of the member months of individuals receiving 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.
- (4) A request for defrayal payment shall be submitted via the System for Electronic Rate and Form Filings, SERFF.
- (5)(a) Each defrayal payment is paid in arrears ~~for the prior calendar year~~.
- (b) The defrayal payment will be paid in the first quarter of the state's fiscal year following the submission of a valid request for a defrayal payment submitted under Subsection (2).
- (c) For example, a carrier submits a request for a defrayal payment in August 2023 for claims incurred during calendar year 2022. The defrayal payment will be paid during the first quarter of the state's fiscal year 2025, July 1, 2024, through September 30, 2024.
- ~~(6)(a) If legislative funding is less than the total amount of requested defrayal payments, each defrayal payment 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 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) "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1, which is available on the 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 Subsection R590-283-4(2)(c) and this section.

(3)(a) To project the state's defrayal payments, a carrier anticipating a defrayal payment shall submit to the commissioner on a quarterly basis the Mandate Defrayal Data template for the current reporting period.[:

~~\_\_\_\_\_ (a) on or before April 15 of each year:~~

~~\_\_\_\_\_ (i) the state required benefit for which the carrier is seeking a defrayal payment;~~

~~\_\_\_\_\_ (ii) the 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 of each year:~~

~~\_\_\_\_\_ (i) the state required benefit for which the carrier is seeking a defrayal payment;~~

~~\_\_\_\_\_ (ii) the 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)-]~~

~~\_\_\_\_\_ (b) A report shall be filed:~~

~~\_\_\_\_\_ (i) on or before April 15 of each year for the period January 1 through March 31;~~

~~\_\_\_\_\_ (ii) on or before August 15 of each year for the period January 1 through June 30;~~

~~\_\_\_\_\_ (iii) on or before November 15 of each year for the period January 1 through October 31;~~

~~\_\_\_\_\_ (iv) on or before February 15 of each year for the period January 1 through December 31 of the previous year; and~~

~~\_\_\_\_\_ (v) for the purpose of Section R590-283-4, on or before September 1 of each year for the period January 1 through December 31 of the previous year.~~

~~\_\_\_\_\_ (4) 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) state-required benefit claims that are eligible for a defrayal payment; and

(2) process for determining which state-required benefit claims are eligible for a defrayal payment.

#### **R590-283-8. Severability.**

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 Last Change: February 8, 2022**

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