

# Incorporation by Reference

(OLRGC -- 5/12/10)

## Statutes

4-32-7(a) The department shall:

(i) **adopt by reference** rules and regulations under federal acts **with changes that the commissioner considers appropriate to make the rules and regulations applicable** to operations and transactions subject to this chapter;

19-3-104(8)(b) and (9): In adopting those rules, the board **may incorporate corresponding federal regulations by reference.**

(9) (a) The board **may adopt rules more stringent** than corresponding federal regulations for the purpose described in Subsection (8) **only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.**

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

41-6a-301(2) The standards and specifications adopted under Subsection (1) shall:

(a) include provisions for school crossing zones and use of school crossing guards; and

(b) correlate with, and where possible conform to, the system set forth in **the most recent edition** of the "**Manual on Uniform Traffic Control Devices for Streets and Highways**" and other standards issued or endorsed by the federal highway administrator.

41-6a-1639(1)(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Transportation shall make rules for the safe transportation of hazardous materials.

(b) The rules shall adopt by reference or be consistent with current Hazardous Materials Regulations of the United States Department of Transportation.

(c) **An adoption by reference under Subsection (1)(b) shall be construed to incorporate amendments thereto as may be made from time to time.**

49-11-615(1) Notwithstanding any other provision of this title, the allowance payable to any person who becomes a member of any system, administered by the board on or after January 1, 1990, may not exceed the limitation imposed by Section 415 of the Internal Revenue Code of 1986, **as amended**, which is incorporated by reference . . .

## Administrative Rules

Most Administrative Rules comply with Incorporation requirements.

Incorporated material include:

- federal regulation
- State law
- State Implementation Plans
- Association Manuals and Standards
- Administrative Rules of Another Agency

### Potential Concerns:

#### More than one standard is incorporated or acceptable:

##### R315-2-9(3)(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, **or** a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, **or** as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

R414-1-12(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, **or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.**

##### R655-4-9(9.2.4) Plastic and Other Non-metallic Casing.

9.2.4.1 Materials. PVC, SR, ABS, or other types of non-metallic well casing and screen may be installed in Utah upon obtaining permission of the well owner. Plastic well casing and screen shall be manufactured and installed to conform with The American National Standards Institute (ANSI) **or** the American Society for Testing and Materials (ASTM) Standard F 480-95, **which are incorporated by reference to these rules . . .**

## Out-of-date incorporation

R414-303-15(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan **effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.**

## Recommendations of a Committee are incorporated -- no date listed

R386-702-6(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the **recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference** in R386-702-11(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

## "Cryptic" standard is incorporated -- no date

R380-70-6 Electronic Data Interchange Standards . . .

(1) A health care provider, a clinical laboratory, or third-party payer that electronically exchanges clinical laboratory results with another health care provider, a clinical laboratory, or third-party payer must comply with **Clinical Laboratory Results v2.0, which is incorporated by reference.**

## Open-ended incorporations

R156-26a-303a. Renewal Requirements - Peer Review . . .

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:  
(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective January 1, 2009 **as amended, which are hereby incorporated by reference** and adopted as the minimum standards for peer reviews of all firms . . .

R309-545-21 Incorporation by Reference.

The following list of Standards shall be considered as **incorporated by reference** in this specific rule. **The most recent published copy of the referenced standard will apply in each case.**  
[cites over a dozen different standards]

R331-7-2(10) "FASB 13" means the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 13, Accounting for Leases, **as amended**, which outlines the required accounting procedures for accounting for leases by a lessor **and is incorporated by reference. Other statements by the FASB, which are incorporated by reference,**

**concerning leasing shall similarly be referred to by number such as "FASB 17" which defines initial direct costs of a lessor.**

R426-12-700 Emergency Medical Responder (EMR) Requirements and Scope of Practice . . .

(2) The Committee adopts as the standard for EMR training and competency in the state, the following affective, cognitive and psychomotor objectives for patient care and treatment from **the current** National Highway Traffic Safety Administration's National EMS Education **Standards for EMR's, which is incorporated by reference.**