

Representative Paul Ray proposes the following substitute bill:

PHARMACY BENEFIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ renames the Pharmacy Benefit Manager Licensing Act as the Pharmacy Benefits Act;
- ▶ creates and amends definitions;
- ▶ requires the Insurance Department to annually publish the total value of rebates and administrative fees received by a pharmacy benefit manager from a pharmaceutical manufacturer;
- ▶ prohibits a pharmacy benefit manager from prohibiting or penalizing a pharmacist's disclosure of certain information regarding a prescription device;
- ▶ prohibits a pharmacy benefit manager from:
 - requiring an insured customer from paying more than a specified amount for a prescription device;
 - reducing a pharmacy's total compensation for the sale of a drug, device, or other product or service unless the pharmacy benefit manager provides the pharmacy with at least 30 days notice;



- 26 • denying or reducing a reimbursement to a pharmacy or a pharmacist after the
- 27 adjudication of a claim unless an investigation or audit proves certain behavior;
- 28 • reimbursing a pharmacy less than a pharmacy benefit manager affiliate in the
- 29 same network;
- 30 • engaging in certain actions related to a pharmacy that mails or delivers a
- 31 prescription drug to an enrollee;
- 32 • requiring that a prescription be filled or refilled by an out-of-state mail service
- 33 pharmacy; and
- 34 • contracting with a health insurer in certain instances unless the pharmacy benefit
- 35 manager agrees to regularly report to the insurer detailed, claim-level
- 36 information regarding pharmaceutical manufacturer rebates received by the
- 37 pharmacy benefit manager in connection with the contract;
- 38 ▶ requires manufacturers and insurers to report certain information on the cost of
- 39 prescription drugs to the Insurance Department;
- 40 ▶ requires the Insurance Department to publish prescription drug information reported
- 41 to the department;
- 42 ▶ requires the Insurance Department to make rules, as necessary, to promote
- 43 comparability of information reported to the department; and
- 44 ▶ makes certain records a protected record under the Government Records Access and
- 45 Management Act.

46 **Money Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **31A-46-101**, as enacted by Laws of Utah 2019, Chapter 241

53 **31A-46-102**, as enacted by Laws of Utah 2019, Chapter 241

54 **31A-46-301**, as enacted by Laws of Utah 2019, Chapter 241

55 **31A-46-302**, as renumbered and amended by Laws of Utah 2019, Chapter 241

56 **31A-46-303**, as renumbered and amended by Laws of Utah 2019, Chapter 241

57 [31A-46-304](#), as enacted by Laws of Utah 2019, Chapter 241

58 [63G-2-305](#), as last amended by Laws of Utah 2019, Chapters 128, 193, 244, and 277

59 ENACTS:

60 [31A-46-305](#), Utah Code Annotated 1953

61 [31A-46-306](#), Utah Code Annotated 1953

62 [31A-46-307](#), Utah Code Annotated 1953

63 [31A-47-101](#), Utah Code Annotated 1953

64 [31A-47-102](#), Utah Code Annotated 1953

65 [31A-47-103](#), Utah Code Annotated 1953



67 *Be it enacted by the Legislature of the state of Utah:*

68 Section 1. Section [31A-46-101](#) is amended to read:

69 **CHAPTER 46. PHARMACY BENEFITS ACT**

70 **31A-46-101. Title.**

71 This chapter is known as ~~[the]~~ "Pharmacy ~~[Benefit Manager Licensing Act]~~ Benefits
72 Act."

73 Section 2. Section [31A-46-102](#) is amended to read:

74 **31A-46-102. Definitions.**

75 As used in this chapter:

76 (1) "Administrative fee" means any payment, other than a rebate, that a pharmaceutical
77 manufacturer makes directly or indirectly to a pharmacy benefit manager.

78 (2) "Contracting insurer" means an insurer ~~[as defined in Section [31A-22-636](#)]~~ with
79 whom a pharmacy benefit manager contracts to provide a pharmacy benefit management
80 service.

81 (3) "Dispense" means the same as that term is defined in Section [58-17b-102](#).

82 (4) "Drug" means the same as that term is defined in Section [58-17b-102](#).

83 (5) "Insurer" means the same as that term is defined in Section [31A-22-636](#).

84 (6) "Patient counseling" means the same as that term is defined in Section [58-17b-102](#).

85 (7) "Pharmaceutical facility" means the same as that term is defined in Section
86 [58-17b-102](#).

87 (8) "Pharmaceutical manufacturer" means a pharmaceutical facility that manufactures

88 prescription drugs.

89 [~~3~~] (9) "Pharmacist" means the same as that term is defined in Section [58-17b-102](#).

90 [~~4~~] (10) "Pharmacy" means the same as that term is defined in Section [58-17b-102](#).

91 [~~5~~] (11) "Pharmacy benefits management service" means any of the following

92 services provided to a health benefit plan, or to a participant of a health benefit plan:

93 (a) negotiating the amount to be paid by a health benefit plan for a prescription drug; or

94 (b) administering or managing a prescription drug benefit provided by the health

95 benefit plan for the benefit of a participant of the health benefit plan, including administering

96 or managing:

97 (i) [~~a~~] mail service pharmacy;

98 (ii) a specialty pharmacy;

99 (iii) claims processing;

100 (iv) payment of a claim;

101 (v) retail network management;

102 (vi) clinical formulary development;

103 (vii) clinical formulary management services;

104 (viii) rebate contracting;

105 (ix) rebate administration;

106 (x) a participant compliance program;

107 (xi) a therapeutic intervention program;

108 (xii) a disease management program; or

109 (xiii) a service that is similar to, or related to, a service described in Subsection [~~5~~]

110 (11)(a) or [~~5~~] (11)(b)(i) through (xii).

111 [~~6~~] (12) "Pharmacy benefit manager" means a person licensed under this chapter to
112 provide a pharmacy benefits management service.

113 [~~7~~] (13) "Pharmacy service" means a product, good, or service provided to an
114 individual by a pharmacy or pharmacist.

115 (14) "Prescription device" means the same as that term is defined in Section
116 [58-17b-102](#).

117 (15) "Prescription drug" means the same as that term is defined in Section [58-17b-102](#).

118 [~~8~~] (16) (a) "Rebate" means a refund, discount, or other price concession that is paid

119 by a pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription
120 drug's utilization or effectiveness.

121 (b) "Rebate" does not include an administrative fee.

122 (17) "Retail pharmacy" means the same as that term is defined in Section 58-17b-102.

123 (18) "Wholesale acquisition cost" means the same as that term is defined in 42 U.S.C.
124 Sec. 1395w-3a.

125 Section 3. Section **31A-46-301** is amended to read:

126 **31A-46-301. Reporting requirements.**

127 (1) Before April 1 of each year, a pharmacy benefit manager operating in the state shall
128 report to the department, for the previous calendar year:

129 (a) any insurer, pharmacy, or pharmacist in the state with which the pharmacy benefit
130 manager had a contract;

131 (b) the total value, in the aggregate, of all rebates and administrative fees that are
132 attributable to enrollees of a contracting insurer; and

133 (c) if applicable, the percentage of aggregate rebates that the pharmacy benefit manager
134 retained under the pharmacy benefit manager's agreement to provide pharmacy benefits
135 management services to a contracting insurer.

136 (2) Records submitted to the commissioner under Subsections (1)(b) and (c) are a
137 protected record under Title 63G, Chapter 2, Government Records Access and Management
138 Act.

139 (3) (a) The department shall publish the information provided by a pharmacy benefit
140 manager under ~~[Subsection]~~ Subsections (1)(b) and (1)(c) in the annual report described in
141 Section 31A-2-201.2.

142 (b) The department may not publish information submitted under Subsection (1)(b) or
143 (c) in a manner that:

144 (i) makes a ~~[specific submission from a contracting insurer or]~~ pharmacy benefit
145 manager or contracting insurer identifiable; or

146 (ii) is likely to disclose information that is a trade secret as defined in Section 13-24-2.

147 (c) At least 30 days before the day on which the department publishes the data, the
148 department shall provide a pharmacy benefit manager that submitted data under Subsection
149 (1)(b) or (c) with:

150 (i) a general description of the data that will be published by the department;
151 (ii) an opportunity to submit to the department, within a reasonable period of time and
152 in a manner established by the department by rule made in accordance with Title 63G, Chapter
153 3, Utah Administrative Rulemaking Act:

154 (A) any correction of errors, with supporting evidence and comments; and
155 (B) information that demonstrates that the publication of the data will violate
156 Subsection (3)(b), with supporting evidence and comments.

157 Section 4. Section 31A-46-302 is amended to read:

158 **31A-46-302. Direct or indirect remuneration by pharmacy benefit managers --**
159 **Pharmacist disclosures -- Limit on customer payment for prescription drugs and**
160 **prescription devices -- 30-day notice required to reduce total compensation.**

161 (1) As used in this section:

162 (a) "Allowable claim amount" means the amount paid by an insurer under the
163 customer's health benefit plan.

164 (b) "Cost share" means the amount paid by an insured customer under the customer's
165 health benefit plan.

166 (c) "Direct or indirect remuneration" means any adjustment in the total compensation:

167 (i) received by a pharmacy from a pharmacy benefit manager for the sale of a drug,
168 device, or other product or service; and

169 (ii) that is determined after the sale of the product or service.

170 (d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

171 (e) "Pharmacy reimbursement" means the amount paid to a pharmacy by a pharmacy
172 benefit manager for a dispensed prescription drug or prescription device.

173 (f) "Pharmacy services administration organization" means an entity that contracts with
174 a pharmacy to assist with third-party payer interactions and administrative services related to
175 third-party payer interactions, including:

176 (i) contracting with a pharmacy benefit manager on behalf of the pharmacy; and

177 (ii) managing a pharmacy's claims payments from third-party payers.

178 (g) "Pharmacy service entity" means:

179 (i) a pharmacy services administration organization; or

180 (ii) a pharmacy benefit manager.

181 (h) (i) "Reimbursement report" means a report on the adjustment in total compensation
182 for a claim.

183 (ii) "Reimbursement report" does not include a report on adjustments made pursuant to
184 a pharmacy audit or reprocessing.

185 (i) "Sale" means a prescription drug or prescription device claim covered by a health
186 benefit plan.

187 (2) If a pharmacy service entity engages in direct or indirect remuneration with a
188 pharmacy, the pharmacy service entity shall make a reimbursement report available to the
189 pharmacy upon the pharmacy's request.

190 (3) For the reimbursement report described in Subsection (2), the pharmacy service
191 entity shall:

192 (a) include the adjusted compensation amount related to a claim and the reason for the
193 adjusted compensation; and

194 (b) provide the reimbursement report:

195 (i) in accordance with the contract between the pharmacy and the pharmacy service
196 entity;

197 (ii) in an electronic format that is easily accessible; and

198 (iii) within 120 days after the day on which the pharmacy benefit manager receives a
199 report of a sale of a product or service by the pharmacy.

200 (4) A pharmacy service entity shall, upon a pharmacy's request, provide the pharmacy
201 with:

202 (a) the reasons for any adjustments contained in a reimbursement report; and

203 (b) an explanation of the reasons provided in Subsection (4)(a).

204 (5) (a) A pharmacy benefit manager may not prohibit or penalize the disclosure by a
205 pharmacist of:

206 (i) an insured customer's cost share for a covered prescription drug or prescription
207 device;

208 (ii) the availability of any therapeutically equivalent alternative medications or devices;

209 or

210 (iii) alternative methods of paying for the prescription medication or prescription
211 device, including paying the cash price, that are less expensive than the cost share of the

212 prescription drug.

213 (b) Penalties that are prohibited under Subsection (5)(a) include increased utilization
214 review, reduced payments, and other financial disincentives.

215 (6) A pharmacy benefit manager may not require an insured customer to pay, for a
216 covered prescription drug or prescription device, more than the lesser of:

217 (a) the applicable cost share of the prescription drug or prescription device being
218 dispensed;

219 (b) the applicable allowable claim amount of the prescription drug or prescription
220 device being dispensed;

221 (c) the applicable pharmacy reimbursement of the prescription drug or prescription
222 device being dispensed; or

223 (d) the retail price of the prescription drug or prescription device without prescription
224 drug coverage.

225 (7) For a contract entered into or renewed on or after May 12, 2020, a pharmacy benefit
226 manager may not engage in direct or indirect remuneration that results in a reduction in total
227 compensation received by a pharmacy from the pharmacy benefit manager for the sale of a
228 drug, device, or other product or service unless the pharmacy benefit manager provides the
229 pharmacy with at least 30 days notice of the direct or indirect remuneration.

230 Section 5. Section **31A-46-303** is amended to read:

231 **31A-46-303. Insurer and pharmacy benefit management services -- Registration**
232 **-- Maximum allowable cost -- Audit restrictions.**

233 (1) As used in this section:

234 (a) "Maximum allowable cost" means:

235 (i) a maximum reimbursement amount for a group of pharmaceutically and
236 therapeutically equivalent drugs; or

237 (ii) any similar reimbursement amount that is used by a pharmacy benefit manager to
238 reimburse pharmacies for multiple source drugs.

239 (b) "Obsolete" means a product that may be listed in national drug pricing compendia
240 but is no longer available to be dispensed based on the expiration date of the last lot
241 manufactured.

242 (c) "Pharmacy benefit manager" means a person or entity that provides pharmacy

243 benefit management services as defined in Section 49-20-502 on behalf of an insurer [as
244 defined in Subsection ~~31A-22-636(1)~~].

245 (2) An insurer and an insurer's pharmacy benefit manager is subject to the pharmacy
246 audit provisions of Section 58-17b-622.

247 (3) A pharmacy benefit manager shall not use maximum allowable cost as a basis for
248 reimbursement to a pharmacy unless:

249 (a) the drug is listed as "A" or "B" rated in the most recent version of the United States
250 Food and Drug Administration's approved drug products with therapeutic equivalent
251 evaluations, also known as the "Orange Book," or has an "NR" or "NA" rating or similar rating
252 by a nationally recognized reference; and

253 (b) the drug is:

254 (i) generally available for purchase in this state from a national or regional wholesaler;
255 and

256 (ii) not obsolete.

257 (4) The maximum allowable cost may be determined using comparable and current
258 data on drug prices obtained from multiple nationally recognized, comprehensive data sources,
259 including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are
260 available for purchase by pharmacies in the state.

261 (5) For every drug for which the pharmacy benefit manager uses maximum allowable
262 cost to reimburse a contracted pharmacy, the pharmacy benefit manager shall:

263 (a) include in the contract with the pharmacy information identifying the national drug
264 pricing compendia and other data sources used to obtain the drug price data;

265 (b) review and make necessary adjustments to the maximum allowable cost, using the
266 most recent data sources identified in Subsection (5)(a), at least once per week;

267 (c) provide a process for the contracted pharmacy to appeal the maximum allowable
268 cost in accordance with Subsection (6); and

269 (d) include in each contract with a contracted pharmacy a process to obtain an update
270 to the pharmacy product pricing files used to reimburse the pharmacy in a format that is readily
271 available and accessible.

272 (6) (a) The right to appeal in Subsection (5)(c) shall be:

273 (i) limited to 21 days following the initial claim adjudication; and

274 (ii) investigated and resolved by the pharmacy benefit manager within 14 business
275 days.

276 (b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted
277 pharmacy with the reason for the denial and the identification of the national drug code of the
278 drug that may be purchased by the pharmacy at a price at or below the price determined by the
279 pharmacy benefit manager.

280 (7) The contract with each pharmacy shall contain a dispute resolution mechanism in
281 the event either party breaches the terms or conditions of the contract.

282 (8) This section does not apply to a pharmacy benefit manager when the pharmacy
283 benefit manager is providing pharmacy benefit management services on behalf of the state
284 Medicaid program.

285 Section 6. Section **31A-46-304** is amended to read:

286 **31A-46-304. Claims practices.**

287 (1) A pharmacy benefit manager shall permit a pharmacy to collect the amount of a
288 customer's cost share from any source.

289 (2) A pharmacy benefit manager may not deny or reduce a reimbursement to a
290 pharmacy or a pharmacist after the adjudication of the claim, unless:

291 (a) the pharmacy or pharmacist submitted the original claim fraudulently;

292 (b) the original reimbursement was incorrect because:

293 (i) the pharmacy or pharmacist had already been paid for the pharmacy service; or

294 (ii) an unintentional error resulted in an incorrect reimbursement; or

295 (c) the pharmacy service was not rendered by the pharmacy or pharmacist.

296 (3) Subsection (2) does not apply if:

297 (a) ~~[an investigative audit]~~ any form of an investigation or audit of pharmacy records
298 for fraud, waste, abuse, or other intentional misrepresentation ~~[indicates]~~ proves that the
299 pharmacy or pharmacist engaged in criminal wrongdoing, fraud, or other intentional
300 misrepresentation; or

301 (b) the reimbursement is reduced as the result of the reconciliation of a reimbursement
302 amount under a performance contract if:

303 (i) the performance contract lays out clear performance standards under which the
304 reimbursement for a specific drug may be increased or decreased; and

305 (ii) the agreement between the pharmacy benefit manager and the pharmacy or
306 pharmacist explicitly states, in a separate document that is signed by the pharmacy benefit
307 manager and the pharmacy or pharmacist, that the provisions of Subsection (2) do not apply.

308 Section 7. Section **31A-46-305** is enacted to read:

309 **31A-46-305. Pharmacy reimbursement.**

310 A pharmacy benefit manager shall reimburse a pharmacy an amount no less than the
311 amount that the pharmacy benefit manager reimburses an affiliate of the pharmacy benefit
312 manager in the same network for providing the same or equivalent service.

313 Section 8. Section **31A-46-306** is enacted to read:

314 **31A-46-306. Mailing or delivering prescription drugs -- Out-of-state mail service.**

315 (1) A pharmacy benefit manager or an insurer may not, directly or indirectly:

316 (a) prohibit an in-network retail pharmacy from:

317 (i) mailing or delivering a prescription drug to an enrollee as a service of the
318 in-network retail pharmacy;

319 (ii) charging a shipping or handling fee to an enrollee who requests that the in-network
320 retail pharmacy mail or deliver a prescription drug to the enrollee; or

321 (iii) offering the services described in Subsection (1)(a)(i) to an enrollee; or

322 (b) charge an enrollee who uses an in-network retail pharmacy that offers to mail or
323 deliver a prescription drug to an enrollee a fee or copayment that is higher than the fee or
324 copayment the enrollee would pay if the enrollee used an in-network retail pharmacy that does
325 not offer to mail or deliver a prescription drug to an enrollee.

326 (2) (a) A pharmacy benefit manager may not require that a prescription be filled or
327 refilled by an out-of-state mail service pharmacy.

328 (b) Subsection (2)(a) does not apply to a drug that:

329 (i) is subject to restricted distribution by the United States Food and Drug
330 Administration; or

331 (ii) requires special handling, provider coordination, or patient education that cannot be
332 provided by a retail pharmacy.

333 Section 9. Section **31A-46-307** is enacted to read:

334 **31A-46-307. Pharmacy benefit manager reporting.**

335 (1) A pharmacy benefit manager may not enter into or renew a contract with an insurer

336 on or after January 1, 2021, to administer or manage rebate contracting or rebate administration
 337 unless the pharmacy benefit manager agrees to regularly report to the insurer information
 338 regarding pharmaceutical manufacturer rebates received by the pharmacy benefit manager
 339 under the contract.

340 (2) The quality and type of information required under Subsection (1) shall be detailed,
 341 claims level information unless the pharmacy benefit manager and insurer agree to waive this
 342 requirement in a separate written agreement.

343 Section 10. Section 31A-47-101 is enacted to read:

344 **CHAPTER 47. PRESCRIPTION DRUG PRICE TRANSPARENCY ACT**

345 **31A-47-101. Title.**

346 This chapter is known as "Prescription Drug Price Transparency Act."

347 Section 11. Section 31A-47-102 is enacted to read:

348 **31A-47-102. Definitions.**

349 As used in this chapter:

350 (1) "Drug" means a prescription drug, as defined in Section [58-17b-102](#).

351 (2) "Insurer" means the same as that term is defined in Section [31A-22-634](#).

352 (3) "Manufacturer" means a person that is engaged in the manufacturing of a drug that
 353 is available for purchase by residents of the state.

354 (4) "Rebate" means the same as that term is defined in Section [31A-46-102](#).

355 (5) "Wholesale acquisition cost" means the same as that term is defined in 42 U.S.C.

356 Sec. 1395w-3a.

357 Section 12. Section 31A-47-103 is enacted to read:

358 **31A-47-103. Manufacturer reports -- Insurer report -- Publication by department.**

359 (1) (a) A manufacturer of a drug shall report to the department the information
 360 described in Subsection (1)(b) no more than 30 days after the day on which an increase to the
 361 wholesale acquisition cost of the drug results in an increase to the wholesale acquisition cost of
 362 the drug of:

363 (i) ~~25%~~ 20% ~~←~~ or more over the preceding ~~3~~ two ~~←~~ years; or

364 (ii) ~~10%~~ 12% ~~←~~ or more over the preceding 12 months.

365 (b) The manufacturer shall report:

366 (i) (A) the name of the drug;

367 (B) the dosage form of the drug; and
368 (C) the strength of the drug;
369 (ii) whether the drug is a brand name drug or a generic drug;
370 (iii) the effective date of the increase in the wholesale acquisition cost of the drug;
371 (iv) a written description, suitable for public release, of the factors that led to the
372 increase in the wholesale acquisition cost of the drug and the significance of each factor;
373 (v) the manufacturer's aggregate company-wide research and development costs for the
374 most recent year for which final audit data is available;
375 (vi) the name of each of the manufacturer's drugs approved by the United States Food
376 and Drug Administration during the preceding three calendar years; and
377 (vii) the names of drugs manufactured by the manufacturer that lost patent exclusivity
378 in the United States during the preceding three calendar years.
379 (c) Subsection (1)(a) applies only to a drug with a wholesale acquisition cost of at least
380 \$100 for a 30-day supply before the effective date of the increase in the wholesale acquisition
381 cost of the drug.
382 (d) A manufacturer's obligations under this Subsection (1) is fully satisfied by
383 submission of information and data that a manufacturer includes in the manufacturer's annual
384 consolidated report on Securities and Exchange Commission Form 10-K or any other public
385 disclosure.
386 (e) The department shall consult with representatives of manufacturers to establish a
387 single, standardized format for reporting information under this section that minimizes the
388 administrative burden of reporting for manufacturers and the state.
389 (f) Information provided to the department under Subsection (1)(b) may not be released
390 in a manner that:
391 (i) would allow for the identification of an individual drug, therapeutic class of drugs,
392 or manufacturer; or
393 (ii) is likely to compromise the financial, competitive, or proprietary nature of the
394 information.
395 (2) Before April 1 of each year, an insurer shall report to the department in aggregate
396 the following information for the preceding plan year for health benefit plans offered by the
397 insurer:

398 (a) for the 25 drugs for which spending by the insurer was the greatest, after adjusting
399 for rebates:

400 (i) the name of the drug;

401 (ii) the dosage form of the drug; and

402 (iii) the strength of the drug;

403 (b) the percentage increase over the previous year in net spending for all drugs, after
404 adjusting for rebates;

405 (c) the percentage of the increase in premiums over the previous year attributable to all
406 drugs;

407 (d) the percentage of specialty drugs with utilization management requirements; and

408 (e) the effect of specialty drug utilization management on premiums.

409 (3) The department shall publish on the department's website:

410 (a) no later than 60 days after receiving the information, information reported to the
411 department under Subsection (1); and

412 (b) no later than June 1 of each year, information reported to the department under
413 Subsection (2).

414 (4) The department shall make rules, as necessary, in accordance with Title 63G,
415 Chapter 3, Utah Administrative Rulemaking Act, to promote comparability of information
416 reported to the department under this chapter.

417 Section 13. Section **63G-2-305** is amended to read:

418 **63G-2-305. Protected records.**

419 The following records are protected if properly classified by a governmental entity:

420 (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret
421 has provided the governmental entity with the information specified in Section [63G-2-309](#);

422 (2) commercial information or nonindividual financial information obtained from a
423 person if:

424 (a) disclosure of the information could reasonably be expected to result in unfair
425 competitive injury to the person submitting the information or would impair the ability of the
426 governmental entity to obtain necessary information in the future;

427 (b) the person submitting the information has a greater interest in prohibiting access
428 than the public in obtaining access; and

429 (c) the person submitting the information has provided the governmental entity with
430 the information specified in Section 63G-2-309;

431 (3) commercial or financial information acquired or prepared by a governmental entity
432 to the extent that disclosure would lead to financial speculations in currencies, securities, or
433 commodities that will interfere with a planned transaction by the governmental entity or cause
434 substantial financial injury to the governmental entity or state economy;

435 (4) records, the disclosure of which could cause commercial injury to, or confer a
436 competitive advantage upon a potential or actual competitor of, a commercial project entity as
437 defined in Subsection 11-13-103(4);

438 (5) test questions and answers to be used in future license, certification, registration,
439 employment, or academic examinations;

440 (6) records, the disclosure of which would impair governmental procurement
441 proceedings or give an unfair advantage to any person proposing to enter into a contract or
442 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
443 Subsection (6) does not restrict the right of a person to have access to, after the contract or
444 grant has been awarded and signed by all parties:

445 (a) a bid, proposal, application, or other information submitted to or by a governmental
446 entity in response to:

447 (i) an invitation for bids;

448 (ii) a request for proposals;

449 (iii) a request for quotes;

450 (iv) a grant; or

451 (v) other similar document; or

452 (b) an unsolicited proposal, as defined in Section 63G-6a-712;

453 (7) information submitted to or by a governmental entity in response to a request for
454 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
455 the right of a person to have access to the information, after:

456 (a) a contract directly relating to the subject of the request for information has been
457 awarded and signed by all parties; or

458 (b) (i) a final determination is made not to enter into a contract that relates to the
459 subject of the request for information; and

460 (ii) at least two years have passed after the day on which the request for information is
461 issued;

462 (8) records that would identify real property or the appraisal or estimated value of real
463 or personal property, including intellectual property, under consideration for public acquisition
464 before any rights to the property are acquired unless:

465 (a) public interest in obtaining access to the information is greater than or equal to the
466 governmental entity's need to acquire the property on the best terms possible;

467 (b) the information has already been disclosed to persons not employed by or under a
468 duty of confidentiality to the entity;

469 (c) in the case of records that would identify property, potential sellers of the described
470 property have already learned of the governmental entity's plans to acquire the property;

471 (d) in the case of records that would identify the appraisal or estimated value of
472 property, the potential sellers have already learned of the governmental entity's estimated value
473 of the property; or

474 (e) the property under consideration for public acquisition is a single family residence
475 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
476 the property as required under Section [78B-6-505](#);

477 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
478 compensated transaction of real or personal property including intellectual property, which, if
479 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
480 of the subject property, unless:

481 (a) the public interest in access is greater than or equal to the interests in restricting
482 access, including the governmental entity's interest in maximizing the financial benefit of the
483 transaction; or

484 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
485 the value of the subject property have already been disclosed to persons not employed by or
486 under a duty of confidentiality to the entity;

487 (10) records created or maintained for civil, criminal, or administrative enforcement
488 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
489 release of the records:

490 (a) reasonably could be expected to interfere with investigations undertaken for

491 enforcement, discipline, licensing, certification, or registration purposes;

492 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
493 proceedings;

494 (c) would create a danger of depriving a person of a right to a fair trial or impartial
495 hearing;

496 (d) reasonably could be expected to disclose the identity of a source who is not
497 generally known outside of government and, in the case of a record compiled in the course of
498 an investigation, disclose information furnished by a source not generally known outside of
499 government if disclosure would compromise the source; or

500 (e) reasonably could be expected to disclose investigative or audit techniques,
501 procedures, policies, or orders not generally known outside of government if disclosure would
502 interfere with enforcement or audit efforts;

503 (11) records the disclosure of which would jeopardize the life or safety of an
504 individual;

505 (12) records the disclosure of which would jeopardize the security of governmental
506 property, governmental programs, or governmental recordkeeping systems from damage, theft,
507 or other appropriation or use contrary to law or public policy;

508 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
509 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
510 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

511 (14) records that, if disclosed, would reveal recommendations made to the Board of
512 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
513 Board of Pardons and Parole, or the Department of Human Services that are based on the
514 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
515 jurisdiction;

516 (15) records and audit workpapers that identify audit, collection, and operational
517 procedures and methods used by the State Tax Commission, if disclosure would interfere with
518 audits or collections;

519 (16) records of a governmental audit agency relating to an ongoing or planned audit
520 until the final audit is released;

521 (17) records that are subject to the attorney client privilege;

522 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
523 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
524 quasi-judicial, or administrative proceeding;

525 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
526 from a member of the Legislature; and

527 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
528 legislative action or policy may not be classified as protected under this section; and

529 (b) (i) an internal communication that is part of the deliberative process in connection
530 with the preparation of legislation between:

531 (A) members of a legislative body;

532 (B) a member of a legislative body and a member of the legislative body's staff; or

533 (C) members of a legislative body's staff; and

534 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
535 legislative action or policy may not be classified as protected under this section;

536 (20) (a) records in the custody or control of the Office of Legislative Research and
537 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
538 legislation or contemplated course of action before the legislator has elected to support the
539 legislation or course of action, or made the legislation or course of action public; and

540 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
541 Office of Legislative Research and General Counsel is a public document unless a legislator
542 asks that the records requesting the legislation be maintained as protected records until such
543 time as the legislator elects to make the legislation or course of action public;

544 (21) research requests from legislators to the Office of Legislative Research and
545 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
546 in response to these requests;

547 (22) drafts, unless otherwise classified as public;

548 (23) records concerning a governmental entity's strategy about:

549 (a) collective bargaining; or

550 (b) imminent or pending litigation;

551 (24) records of investigations of loss occurrences and analyses of loss occurrences that
552 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the

553 Uninsured Employers' Fund, or similar divisions in other governmental entities;

554 (25) records, other than personnel evaluations, that contain a personal recommendation
555 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
556 personal privacy, or disclosure is not in the public interest;

557 (26) records that reveal the location of historic, prehistoric, paleontological, or
558 biological resources that if known would jeopardize the security of those resources or of
559 valuable historic, scientific, educational, or cultural information;

560 (27) records of independent state agencies if the disclosure of the records would
561 conflict with the fiduciary obligations of the agency;

562 (28) records of an institution within the state system of higher education defined in
563 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
564 retention decisions, and promotions, which could be properly discussed in a meeting closed in
565 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
566 the final decisions about tenure, appointments, retention, promotions, or those students
567 admitted, may not be classified as protected under this section;

568 (29) records of the governor's office, including budget recommendations, legislative
569 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
570 policies or contemplated courses of action before the governor has implemented or rejected
571 those policies or courses of action or made them public;

572 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
573 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
574 recommendations in these areas;

575 (31) records provided by the United States or by a government entity outside the state
576 that are given to the governmental entity with a requirement that they be managed as protected
577 records if the providing entity certifies that the record would not be subject to public disclosure
578 if retained by it;

579 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
580 public body except as provided in Section 52-4-206;

581 (33) records that would reveal the contents of settlement negotiations but not including
582 final settlements or empirical data to the extent that they are not otherwise exempt from
583 disclosure;

584 (34) memoranda prepared by staff and used in the decision-making process by an
585 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
586 other body charged by law with performing a quasi-judicial function;

587 (35) records that would reveal negotiations regarding assistance or incentives offered
588 by or requested from a governmental entity for the purpose of encouraging a person to expand
589 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
590 person or place the governmental entity at a competitive disadvantage, but this section may not
591 be used to restrict access to a record evidencing a final contract;

592 (36) materials to which access must be limited for purposes of securing or maintaining
593 the governmental entity's proprietary protection of intellectual property rights including patents,
594 copyrights, and trade secrets;

595 (37) the name of a donor or a prospective donor to a governmental entity, including an
596 institution within the state system of higher education defined in Section 53B-1-102, and other
597 information concerning the donation that could reasonably be expected to reveal the identity of
598 the donor, provided that:

599 (a) the donor requests anonymity in writing;

600 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
601 classified protected by the governmental entity under this Subsection (37); and

602 (c) except for an institution within the state system of higher education defined in
603 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
604 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
605 over the donor, a member of the donor's immediate family, or any entity owned or controlled
606 by the donor or the donor's immediate family;

607 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
608 73-18-13;

609 (39) a notification of workers' compensation insurance coverage described in Section
610 34A-2-205;

611 (40) (a) the following records of an institution within the state system of higher
612 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
613 or received by or on behalf of faculty, staff, employees, or students of the institution:

614 (i) unpublished lecture notes;

- 615 (ii) unpublished notes, data, and information:
- 616 (A) relating to research; and
- 617 (B) of:
- 618 (I) the institution within the state system of higher education defined in Section
- 619 [53B-1-102](#); or
- 620 (II) a sponsor of sponsored research;
- 621 (iii) unpublished manuscripts;
- 622 (iv) creative works in process;
- 623 (v) scholarly correspondence; and
- 624 (vi) confidential information contained in research proposals;
- 625 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 626 information required pursuant to Subsection [53B-16-302](#)(2)(a) or (b); and
- 627 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 628 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 629 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 630 date that audit is completed and made public; and
- 631 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 632 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 633 the records in the custody or control of the Office of Legislative Auditor General that would
- 634 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 635 protected records until the audit is completed and made public;
- 636 (42) records that provide detail as to the location of an explosive, including a map or
- 637 other document that indicates the location of:
- 638 (a) a production facility; or
- 639 (b) a magazine;
- 640 (43) information:
- 641 (a) contained in the statewide database of the Division of Aging and Adult Services
- 642 created by Section [62A-3-311.1](#); or
- 643 (b) received or maintained in relation to the Identity Theft Reporting Information
- 644 System (IRIS) established under Section [67-5-22](#);
- 645 (44) information contained in the Management Information System and Licensing

646 Information System described in Title 62A, Chapter 4a, Child and Family Services;
647 (45) information regarding National Guard operations or activities in support of the
648 National Guard's federal mission;
649 (46) records provided by any pawn or secondhand business to a law enforcement
650 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
651 Secondhand Merchandise Transaction Information Act;
652 (47) information regarding food security, risk, and vulnerability assessments performed
653 by the Department of Agriculture and Food;
654 (48) except to the extent that the record is exempt from this chapter pursuant to Section
655 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
656 prepared or maintained by the Division of Emergency Management, and the disclosure of
657 which would jeopardize:
658 (a) the safety of the general public; or
659 (b) the security of:
660 (i) governmental property;
661 (ii) governmental programs; or
662 (iii) the property of a private person who provides the Division of Emergency
663 Management information;
664 (49) records of the Department of Agriculture and Food that provides for the
665 identification, tracing, or control of livestock diseases, including any program established under
666 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
667 of Animal Disease;
668 (50) as provided in Section 26-39-501:
669 (a) information or records held by the Department of Health related to a complaint
670 regarding a child care program or residential child care which the department is unable to
671 substantiate; and
672 (b) information or records related to a complaint received by the Department of Health
673 from an anonymous complainant regarding a child care program or residential child care;
674 (51) unless otherwise classified as public under Section 63G-2-301 and except as
675 provided under Section 41-1a-116, an individual's home address, home telephone number, or
676 personal mobile phone number, if:

677 (a) the individual is required to provide the information in order to comply with a law,
678 ordinance, rule, or order of a government entity; and

679 (b) the subject of the record has a reasonable expectation that this information will be
680 kept confidential due to:

681 (i) the nature of the law, ordinance, rule, or order; and

682 (ii) the individual complying with the law, ordinance, rule, or order;

683 (52) the portion of the following documents that contains a candidate's residential or
684 mailing address, if the candidate provides to the filing officer another address or phone number
685 where the candidate may be contacted:

686 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
687 described in Section [20A-9-201](#), [20A-9-202](#), [20A-9-203](#), [20A-9-404](#), [20A-9-405](#), [20A-9-408](#),
688 [20A-9-408.5](#), [20A-9-502](#), or [20A-9-601](#);

689 (b) an affidavit of impecuniosity, described in Section [20A-9-201](#); or

690 (c) a notice of intent to gather signatures for candidacy, described in Section
691 [20A-9-408](#);

692 (53) the name, home address, work addresses, and telephone numbers of an individual
693 that is engaged in, or that provides goods or services for, medical or scientific research that is:

694 (a) conducted within the state system of higher education, as defined in Section
695 [53B-1-102](#); and

696 (b) conducted using animals;

697 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
698 Evaluation Commission concerning an individual commissioner's vote on whether or not to
699 recommend that the voters retain a judge including information disclosed under Subsection
700 [78A-12-203\(5\)\(e\)](#);

701 (55) information collected and a report prepared by the Judicial Performance
702 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
703 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
704 the information or report;

705 (56) records contained in the Management Information System created in Section
706 [62A-4a-1003](#);

707 (57) records provided or received by the Public Lands Policy Coordinating Office in

708 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

709 (58) information requested by and provided to the 911 Division under Section

710 [63H-7a-302](#);

711 (59) in accordance with Section [73-10-33](#):

712 (a) a management plan for a water conveyance facility in the possession of the Division
713 of Water Resources or the Board of Water Resources; or

714 (b) an outline of an emergency response plan in possession of the state or a county or
715 municipality;

716 (60) the following records in the custody or control of the Office of Inspector General
717 of Medicaid Services, created in Section [63A-13-201](#):

718 (a) records that would disclose information relating to allegations of personal
719 misconduct, gross mismanagement, or illegal activity of a person if the information or
720 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
721 through other documents or evidence, and the records relating to the allegation are not relied
722 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
723 report or final audit report;

724 (b) records and audit workpapers to the extent they would disclose the identity of a
725 person who, during the course of an investigation or audit, communicated the existence of any
726 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
727 regulation adopted under the laws of this state, a political subdivision of the state, or any
728 recognized entity of the United States, if the information was disclosed on the condition that
729 the identity of the person be protected;

730 (c) before the time that an investigation or audit is completed and the final
731 investigation or final audit report is released, records or drafts circulated to a person who is not
732 an employee or head of a governmental entity for the person's response or information;

733 (d) records that would disclose an outline or part of any investigation, audit survey
734 plan, or audit program; or

735 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
736 investigation or audit;

737 (61) records that reveal methods used by the Office of Inspector General of Medicaid
738 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or

739 abuse;

740 (62) information provided to the Department of Health or the Division of Occupational
741 and Professional Licensing under Subsection 58-68-304(3) or (4);

742 (63) a record described in Section 63G-12-210;

743 (64) captured plate data that is obtained through an automatic license plate reader
744 system used by a governmental entity as authorized in Section 41-6a-2003;

745 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
746 victim, including:

747 (a) a victim's application or request for benefits;

748 (b) a victim's receipt or denial of benefits; and

749 (c) any administrative notes or records made or created for the purpose of, or used to,
750 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
751 Reparations Fund;

752 (66) an audio or video recording created by a body-worn camera, as that term is
753 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
754 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
755 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
756 that term is defined in Section 62A-2-101, except for recordings that:

757 (a) depict the commission of an alleged crime;

758 (b) record any encounter between a law enforcement officer and a person that results in
759 death or bodily injury, or includes an instance when an officer fires a weapon;

760 (c) record any encounter that is the subject of a complaint or a legal proceeding against
761 a law enforcement officer or law enforcement agency;

762 (d) contain an officer involved critical incident as defined in Subsection
763 76-2-408(1)(d); or

764 (e) have been requested for reclassification as a public record by a subject or
765 authorized agent of a subject featured in the recording;

766 (67) a record pertaining to the search process for a president of an institution of higher
767 education described in Section 53B-2-102, except for application materials for a publicly
768 announced finalist; and

769 (68) an audio recording that is:

770 (a) produced by an audio recording device that is used in conjunction with a device or
771 piece of equipment designed or intended for resuscitating an individual or for treating an
772 individual with a life-threatening condition;

773 (b) produced during an emergency event when an individual employed to provide law
774 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

775 (i) is responding to an individual needing resuscitation or with a life-threatening
776 condition; and

777 (ii) uses a device or piece of equipment designed or intended for resuscitating an
778 individual or for treating an individual with a life-threatening condition; and

779 (c) intended and used for purposes of training emergency responders how to improve
780 their response to an emergency situation;

781 (69) records submitted by or prepared in relation to an applicant seeking a
782 recommendation by the Research and General Counsel Subcommittee, the Budget
783 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an
784 employment position with the Legislature;

785 (70) work papers as defined in Section 31A-2-204;

786 (71) a record made available to Adult Protective Services or a law enforcement agency
787 under Section 61-1-206;

788 (72) a record submitted to the Insurance Department in accordance with Section
789 31A-37-201; and

790 (73) a record described in Section 31A-37-503.

791 (74) any record created by the Division of Occupational and Professional Licensing as
792 a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii); [~~and~~]

793 (75) a record described in Section 72-16-306 that relates to the reporting of an injury
794 involving an amusement ride[-]; and

795 (76) a record submitted to the Insurance Department under Subsection
796 31A-47-103(1)(b).