

1 **DEPARTMENT OF HUMAN SERVICES -**
2 **REVIEW AND OVERSIGHT**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5
6 **LONG TITLE**

7 **General Description:**

8 This bill amends provisions of the Open and Public Meetings Act, the Utah Human
9 Services Code, and the Government Records Access and Management Act to provide
10 review and oversight relating to fatalities and other matters that occur in relation to a
11 person in the custody of, or who has received services from, the Department of Human
12 Services.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ amends provisions of the Open and Public Meetings Act to require that meetings of
17 the Health and Human Services Interim Committee and the Child Welfare
18 Legislative Oversight Panel to review individual cases be closed meetings;
- 19 ▶ requires that investigations of abuse or neglect of a child who is in the custody of
20 the Division of Child and Family Services shall be conducted by an independent
21 child protective service investigator from the private sector;
- 22 ▶ amends and consolidates other provisions relating to investigation of abuse or
23 neglect of a child;
- 24 ▶ codifies and amends provisions relating to fatality reviews and fatality review
25 committees for the Department of Human Services;
- 26 ▶ requires that a copy of a fatality review report and related documents be provided to
27 the Office of Legislative Research and General Counsel and the chairs of the Health
28 and Human Services Interim Committee and the Child Welfare Legislative
29 Oversight Panel;
- 30 ▶ gives the Health and Human Services Interim Committee authority to review, in a
31 closed meeting, a fatality review report;

- 32 ▶ requires the Child Welfare Legislative Oversight Panel to review, in a closed
33 meeting, certain fatality review reports;
- 34 ▶ describes requirements relating to the annual executive summary on fatality review
35 reports;
- 36 ▶ amends the Government Records Access and Management Act to permit the
37 disclosure of fatality review reports and related documents to the Office of
38 Legislative Research and General Counsel and the chairs of the Health and Human
39 Services Interim Committee and the Child Welfare Legislative Oversight Panel; and
- 40 ▶ makes technical changes.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 None

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **52-4-204**, as last amended by Laws of Utah 2006, Chapter 263 and renumbered and
48 amended by Laws of Utah 2006, Chapter 14

49 **52-4-205**, as renumbered and amended by Laws of Utah 2006, Chapter 14

50 **52-4-206**, as last amended by Laws of Utah 2008, Chapter 382

51 **62A-4a-202.6**, as last amended by Laws of Utah 2009, Chapter 75

52 **62A-4a-409**, as last amended by Laws of Utah 2008, Chapters 3 and 299

53 **62A-4a-414**, as last amended by Laws of Utah 2008, Chapter 299

54 **63G-2-202**, as last amended by Laws of Utah 2008, Chapters 87, 91 and renumbered
55 and amended by Laws of Utah 2008, Chapter 382

56 ENACTS:

57 **62A-16-101**, Utah Code Annotated 1953

58 **62A-16-102**, Utah Code Annotated 1953

59 **62A-16-201**, Utah Code Annotated 1953

60 **62A-16-202**, Utah Code Annotated 1953

61 **62A-16-203**, Utah Code Annotated 1953

62 **62A-16-204**, Utah Code Annotated 1953

63 **62A-16-301**, Utah Code Annotated 1953

64 **62A-16-302**, Utah Code Annotated 1953

65 REPEALS:

66 **62A-4a-202.5**, as last amended by Laws of Utah 2001, Chapter 58



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

69 Section 1. Section **52-4-204** is amended to read:

70 **52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for**
71 **meeting recorded.**

72 (1) A closed meeting may be held:

73 (a) if a quorum is present; and

74 (b) (i) if two-thirds of the members of the public body present at an open meeting for
75 which notice is given under Section 52-4-202 vote to approve closing the meeting[~~;~~]; or

76 (ii) for a meeting that is required to be closed under Section 52-4-205, if a majority of
77 the members of the public body present at an open meeting for which notice is given under
78 Section 52-4-202 vote to approve closing the meeting.

79 (2) A closed meeting is not allowed unless each matter discussed in the closed meeting
80 is permitted under Section 52-4-205.

81 (3) An ordinance, resolution, rule, regulation, contract, or appointment may not be
82 approved at a closed meeting.

83 (4) The following information shall be publicly announced and entered on the minutes
84 of the open meeting at which the closed meeting was approved:

85 (a) the reason or reasons for holding the closed meeting;

86 (b) the location where the closed meeting will be held; and

87 (c) the vote by name, of each member of the public body, either for or against the
88 motion to hold the closed meeting.

89 (5) ~~[Nothing]~~ Except as provided in Subsection 52-4-205(2), nothing in this chapter
90 shall be construed to require any meeting to be closed to the public.

91 Section 2. Section **52-4-205** is amended to read:

92 **52-4-205. Purposes of closed meetings.**

- 93 (1) A closed meeting described under Section 52-4-204 may only be held for:
- 94 (a) discussion of the character, professional competence, or physical or mental health
- 95 of an individual;
- 96 (b) strategy sessions to discuss collective bargaining;
- 97 (c) strategy sessions to discuss pending or reasonably imminent litigation;
- 98 (d) strategy sessions to discuss the purchase, exchange, or lease of real property if
- 99 public discussion of the transaction would:
- 100 (i) disclose the appraisal or estimated value of the property under consideration; or
- 101 (ii) prevent the public body from completing the transaction on the best possible terms;
- 102 (e) strategy sessions to discuss the sale of real property if:
- 103 (i) public discussion of the transaction would:
- 104 (A) disclose the appraisal or estimated value of the property under consideration; or
- 105 (B) prevent the public body from completing the transaction on the best possible terms;
- 106 (ii) the public body previously gave public notice that the property would be offered for
- 107 sale; and
- 108 (iii) the terms of the sale are publicly disclosed before the public body approves the
- 109 sale;
- 110 (f) discussion regarding deployment of security personnel, devices, or systems;
- 111 (g) investigative proceedings regarding allegations of criminal misconduct; ~~and~~
- 112 (h) discussion by a county legislative body of commercial information as defined in
- 113 Section 59-1-404~~[-]~~; or
- 114 (i) a purpose for which a meeting is required to be closed under Subsection (2).
- 115 (2) The following meetings shall be closed:
- 116 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
- 117 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
- 118 described in Subsections 62A-16-301(2) and (4); and
- 119 (b) a meeting of the Child Welfare Legislative Oversight Panel to:
- 120 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
- 121 responses to the report described in Subsections 62A-16-301(2) and (4); or
- 122 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).
- 123 ~~(2)~~ (3) A public body may not interview a person applying to fill an elected position

124 in a closed meeting.

125 Section 3. Section **52-4-206** is amended to read:

126 **52-4-206. Record of closed meetings.**

127 (1) Except as provided under Subsection (6), if a public body closes a meeting under
128 Subsection 52-4-205(1), the public body:

129 (a) shall make a recording of the closed portion of the meeting; and

130 (b) may keep detailed written minutes that disclose the content of the closed portion of
131 the meeting.

132 (2) A recording of a closed meeting shall be complete and unedited from the
133 commencement of the closed meeting through adjournment of the closed meeting.

134 (3) The recording and any minutes of a closed meeting shall include:

135 (a) the date, time, and place of the meeting;

136 (b) the names of members present and absent; and

137 (c) the names of all others present except where the disclosure would infringe on the
138 confidentiality necessary to fulfill the original purpose of closing the meeting.

139 (4) Minutes or recordings of a closed meeting that are required to be retained
140 permanently shall be maintained in or converted to a format that meets long-term records
141 storage requirements.

142 (5) Both a recording and written minutes of closed meetings are protected records
143 under Title 63G, Chapter 2, Government Records Access and Management Act, except that the
144 records may be disclosed under a court order only as provided under Section 52-4-304.

145 (6) If a public body closes a meeting exclusively for the purposes described under
146 Subsection 52-4-205(1)(a) [~~or Subsection 52-4-205~~], (1)(f), or (2):

147 (a) the person presiding shall sign a sworn statement affirming that the sole purpose for
148 closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a) [~~or~~
149 ~~Subsection 52-4-205~~],(1)(f), or (2); and

150 (b) the provisions of Subsection (1) of this section do not apply.

151 Section 4. Section **62A-4a-202.6** is amended to read:

152 **62A-4a-202.6. Conflict child protective services investigations -- Authority of**
153 **investigators.**

154 [~~(1)(a) In accordance with Section 67-5-16 the attorney general may employ, with the~~

155 ~~consent of the division, child protective services investigators to investigate reports of abuse or~~
156 ~~neglect of a child that occur while the child is in the custody of the division.]~~

157 ~~[(b) (i) The division shall, in accordance with Subsection 62A-4a-409(5), contract with~~
158 ~~an independent child protective service investigator to investigate reports of abuse or neglect of~~
159 ~~a child that occur while the child is in the custody of the division.]~~

160 ~~[(ii) The executive director of the department shall designate an entity within the~~
161 ~~department, other than the division, to monitor the contract for the investigators described in~~
162 ~~Subsection (1)(b)(i).]~~

163 (1) (a) The division shall contract with an independent child protective service
164 investigator from the private sector to investigate reports of abuse or neglect of a child that
165 occur while the child is in the custody of the division.

166 (b) The executive director shall designate an entity within the department, other than
167 the division, to monitor the contract for the investigators described in Subsection (1)(a).

168 (c) When a report is made that a child is abused or neglected while in the custody of
169 the division:

170 (i) the attorney general may, in accordance with Section 67-5-16, and with the consent
171 of the division, employ a child protective services investigator to conduct a conflict
172 investigation of the report; or

173 (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent
174 of the division, conduct a conflict investigation of the report.

175 (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the
176 consent of the division, conducting a criminal investigation of abuse or neglect under the Title
177 53, Public Safety Code.

178 (2) The investigators described in [Subsection (1)] Subsections (1)(c) and (d) may also
179 investigate allegations of abuse or neglect of a child by a department employee or a licensed
180 substitute care provider.

181 (3) The investigators described in Subsection (1), if not peace officers, shall have the
182 same rights, duties, and authority of a child protective services investigator employed by the
183 division to:

184 (a) make a thorough investigation upon receiving either an oral or written report of
185 alleged abuse or neglect of a child, with the primary purpose of that investigation being the

186 protection of the child;

187 (b) make an inquiry into the child's home environment, emotional, or mental health, the
188 nature and extent of the child's injuries, and the child's physical safety;

189 (c) make a written report of their investigation, including determination regarding
190 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and
191 forward a copy of that report to the division within the time mandates for investigations
192 established by the division; and

193 (d) immediately consult with school authorities to verify the child's status in
194 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
195 includes an allegation of educational neglect[;].

196 ~~[(e) enter upon public or private premises, using appropriate legal processes, to
197 investigate reports of alleged abuse or neglect; and]~~

198 ~~[(f) take a child into protective custody, and deliver the child to a law enforcement
199 officer, or to the division. Control and jurisdiction over the child shall be determined by the
200 provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78A, Chapter 6,
201 Juvenile Court Act of 1996, and as otherwise provided by law.]~~

202 Section 5. Section **62A-4a-409** is amended to read:

203 **62A-4a-409. Investigation by division -- Temporary protective custody --**
204 **Preremoval interviews of children.**

205 (1) (a) The division shall make a thorough preremoval investigation upon receiving
206 either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
207 dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal
208 alcohol syndrome, or fetal drug dependency exists.

209 (b) The primary purpose of the investigation described in Subsection (1)(a) shall be
210 protection of the child.

211 (2) The preremoval investigation described in Subsection (1)(a) shall include the same
212 investigative requirements described in Section 62A-4a-202.3.

213 (3) The division shall make a written report of its investigation that shall include a
214 determination regarding whether the alleged abuse or neglect is supported, unsupported, or
215 without merit.

216 (4) (a) The division shall use an interdisciplinary approach when appropriate in dealing

217 with reports made under this part.

218 (b) For this purpose, the division shall convene appropriate interdisciplinary "child
219 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and
220 coordination services.

221 (c) A representative of the division shall serve as the team's coordinator and chair.
222 Members of the team shall serve at the coordinator's invitation. Whenever possible, the team
223 shall include representatives of:

224 (i) health, mental health, education, and law enforcement agencies;

225 (ii) the child;

226 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;
227 and

228 (iv) other appropriate agencies or individuals.

229 ~~[(5) In any case where the division supervises, governs, or directs the affairs of any
230 individual, institution, or facility that is alleged to be involved in acts or omissions of abuse or
231 neglect, the investigation of the reported abuse or neglect shall be conducted by an agency
232 other than the division.]~~

233 ~~[(6)]~~ (5) If a report of neglect is based upon or includes an allegation of educational
234 neglect, the division shall immediately consult with school authorities to verify the child's
235 status in accordance with Sections 53A-11-101 through 53A-11-103.

236 ~~[(7)]~~ (6) When the division completes its initial investigation under this part, it shall
237 give notice of that completion to the person who made the initial report.

238 ~~[(8)]~~ (7) Division workers or other child protection team members have authority to
239 enter upon public or private premises, using appropriate legal processes, to investigate reports
240 of alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse
241 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

242 ~~[(9)]~~ (8) With regard to any interview of a child prior to removal of that child from the
243 child's home:

244 (a) except as provided in Subsection ~~[(9)]~~ (8)(b) or (c), the division shall inform a
245 parent of the child prior to the interview of:

246 (i) the specific allegations concerning the child; and

247 (ii) the time and place of the interview;

248 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
249 alleged perpetrator, the division is not required to comply with Subsection [~~(9)~~] (8)(a);

250 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
251 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
252 minutes, with the child prior to complying with Subsection [~~(9)~~] (8)(a);

253 (d) in all cases described in Subsection [~~(9)~~] (8)(b) or (c), a parent of the child shall be
254 notified as soon as practicable after the child has been interviewed, but in no case later than 24
255 hours after the interview has taken place;

256 (e) a child's parents shall be notified of the time and place of all subsequent interviews
257 with the child; and

258 (f) the child shall be allowed to have a support person of the child's choice present,
259 who:

260 (i) may include:

261 (A) a school teacher;

262 (B) an administrator;

263 (C) a guidance counselor;

264 (D) a child care provider;

265 (E) a family member;

266 (F) a family advocate; or

267 (G) clergy; and

268 (ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

269 [~~(10)~~] (9) In accordance with the procedures and requirements of Sections
270 62A-4a-202.1 through 62A-4a-202.3, a division worker or child protection team member may
271 take a child into protective custody and deliver the child to a law enforcement officer, or place
272 the child in an emergency shelter facility approved by the juvenile court, at the earliest
273 opportunity subsequent to the child's removal from the child's original environment. Control
274 and jurisdiction over the child is determined by the provisions of Title 78A, Chapter 6, Juvenile
275 Court Act of 1996, and as otherwise provided by law.

276 [~~(11)~~] (10) With regard to cases in which law enforcement has or is conducting an
277 investigation of alleged abuse or neglect of a child:

278 (a) the division shall coordinate with law enforcement to ensure that there is an

279 adequate safety plan to protect the child from further abuse or neglect; and

280 (b) the division is not required to duplicate an aspect of the investigation that, in the
281 division's determination, has been satisfactorily completed by law enforcement.

282 Section 6. Section **62A-4a-414** is amended to read:

283 **62A-4a-414. Interviews of children -- Recording required -- Exceptions.**

284 (1) (a) Except as provided in Subsection (4), interviews of children during an
285 investigation in accordance with Section 62A-4a-409, and involving allegations of sexual
286 abuse, sexual exploitation, severe abuse, or severe neglect of a child, shall be conducted only
287 under the following conditions:

288 (i) the interview shall be recorded visually and aurally on film, videotape, or by other
289 electronic means;

290 (ii) both the interviewer and the child shall be simultaneously recorded and visible on
291 the final product;

292 (iii) the time and date of the interview shall be continuously and clearly visible to any
293 subsequent viewer of the recording; and

294 (iv) the recording equipment shall run continuously for the duration of the interview.

295 (b) This Subsection (1) does not apply to initial or minimal interviews conducted in
296 accordance with Subsection 62A-4a-409[~~(9)~~](8)(b) or (c).

297 (2) Interviews conducted in accordance with Subsection (1) shall be carried out in an
298 existing Children's Justice Center or in a soft interview room, when available.

299 (a) If the Children's Justice Center or a soft interview room is not available, the
300 interviewer shall use the best setting available under the circumstances.

301 (b) Except as provided in Subsection (4), if the equipment required under Subsection
302 (1) is not available, the interview shall be audiotaped, provided that the interviewer shall
303 clearly state at the beginning of the tape:

304 (i) the time, date, and place of the interview;

305 (ii) the full name and age of the child being interviewed; and

306 (iii) that the equipment required under Subsection (1) is not available and why.

307 (3) Except as provided in Subsection (4), all other investigative interviews shall be
308 audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly
309 the time, date, and place of the meeting, and the full name and age of the child in attendance.

310 (4) (a) Subject to Subsection (4)(b), an interview described in this section may be
 311 conducted without being taped if the child:

- 312 (i) is at least nine years old;
- 313 (ii) refuses to have the interview audio taped; and
- 314 (iii) refuses to have the interview video taped.

315 (b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the
 316 child's refusal shall be documented as follows:

317 (i) the interviewer shall attempt to get the child's refusal on tape, including the reasons
 318 for the refusal; or

319 (ii) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the
 320 interviewer shall:

321 (A) state on the tape that the child is present, but has refused to have the interview,
 322 refusal, or the reasons for the refusal taped; or

323 (B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would
 324 otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall
 325 document, in writing, that the child refused to allow the interview to be taped and the reasons
 326 for that refusal.

327 (c) The division shall track the number of interviews under this section that are not
 328 taped, and the number of refusals that are not taped, for each interviewer, in order to determine
 329 whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other
 330 interviewers.

331 Section 7. Section **62A-16-101** is enacted to read:

332 **CHAPTER 16. FATALITY REVIEW ACT**

333 **Part 1. General Provisions**

334 **62A-16-101. Title.**

335 This chapter is known as the "Fatality Review Act."

336 Section 8. Section **62A-16-102** is enacted to read:

337 **62A-16-102. Definitions.**

338 (1) "Committee" means a fatality review committee, formed under Section 62A-16-202
 339 or 62A-16-203.

340 (2) "Qualified individual" means an individual who:

- 341 (a) at the time that the individual dies, is a resident of a facility or program that is
342 owned or operated by the department or a division of the department; or
343 (b) (i) is in the custody of the department or a division of the department; and
344 (ii) placed in a residential placement by the department or a division of the department;
345 (c) at the time that the individual dies, has an open case for the receipt of child welfare
346 services, including:
347 (i) an investigation for abuse, neglect, or dependency;
348 (ii) foster care;
349 (iii) in-home services; or
350 (iv) substitute care;
351 (d) had an open case for the receipt of child welfare services within one year
352 immediately preceding the day on which the individual dies;
353 (e) was the subject of an accepted referral received by Adult Protective Services within
354 one year immediately preceding the day on which the individual dies, if:
355 (i) the department or a division of the department is aware of the death; and
356 (ii) the death is reported as a homicide, suicide, or an undetermined cause;
357 (f) received services from, or under the direction of, the Division of Services for People
358 with Disabilities within one year immediately preceding the day on which the individual dies,
359 unless the individual:
360 (i) lived in the individual's home at the time of death; and
361 (ii) the director of the Office of Services Review determines that the death was not in
362 any way related to services that were provided by, or under the direction of, the department or a
363 division of the department;
364 (g) dies within 60 days after the day on which the individual is discharged from the
365 Utah State Hospital, if the department is aware of the death; or
366 (h) is designated as a qualified individual by the executive director.

367 Section 9. Section **62A-16-201** is enacted to read:

368 **Part 2. Fatality Review**

369 **62A-16-201. Initial review.**

- 370 (1) Within seven days after the day on which the department knows that a qualified
371 individual has died, a person designated by the department shall:

372 (a) complete a deceased client report form, created by the department; and
373 (b) forward the completed client report form to the director of the office or division
374 that has jurisdiction over the region or facility.

375 (2) The director of the office or division described in Subsection (1) shall, upon receipt
376 of a deceased client report form, immediately provide a copy of the form to:

377 (a) the executive director; and

378 (b) the fatality review coordinator.

379 (3) Within 10 days after the day on which the fatality review coordinator receives a
380 copy of the deceased client report form, the fatality review coordinator shall request a copy of
381 all relevant department case records regarding the individual who is the subject of the deceased
382 client report form.

383 (4) Each person who receives a request for a record described in Subsection (3) shall
384 provide a copy of the record to the fatality review coordinator, by a secure method, within
385 seven days after the day on which the request is made.

386 (5) Within 30 days after the day on which the fatality review coordinator receives the
387 case records requested under Subsection (3), the fatality review coordinator, or a designee of
388 the fatality review coordinator, shall:

389 (a) review the deceased client report form, the case files, and other relevant
390 information received by the fatality review coordinator; and

391 (b) make a recommendation to the director of the Office of Services Review regarding
392 whether a formal fatality review should be conducted.

393 (6) (a) In accordance with Subsection (6)(b), within seven days after the day on which
394 the fatality review coordinator makes the recommendation described in Subsection (5)(b), the
395 director of the Office of Services Review shall determine whether to order that a formal fatality
396 review be conducted.

397 (b) The director of the Office of Services Review shall order that a formal fatality
398 review be conducted if:

399 (i) at the time of death, the qualified individual is:

400 (A) an individual described in Subsection 62A-16-102(2)(a) or (b), unless:

401 (I) the death is due to a natural cause; or

402 (II) the director of the Office of Services Review determines that the death was not in

403 any way related to services that were provided by, or under the direction of, the department or a
 404 division of the department; or

405 (B) a child in foster care or substitute care, unless the death is due to:

406 (I) a natural cause; or

407 (II) an accident;

408 (ii) it appears, based on the information provided to the director of the Office of
 409 Services Review, that:

410 (A) a provision of law, rule, policy, or procedure relating to the deceased individual or
 411 the deceased individual's family may have not been complied with;

412 (B) the fatality was not responded to properly;

413 (C) a law, rule, policy, or procedure may need to be changed; or

414 (D) additional training is needed;

415 (iii) the death is caused by suicide; or

416 (iv) the director of the Office of Services Review determines that another reason exists
 417 to order that a formal fatality review be conducted.

418 Section 10. Section **62A-16-202** is enacted to read:

419 **62A-16-202. Fatality Review Committee for a deceased individual who was not a**
 420 **resident of the Utah State Hospital or the Utah State Developmental Center.**

421 (1) Except for a fatality review committee described in Section 62A-16-203, the
 422 fatality review coordinator shall organize a fatality review committee for each formal fatality
 423 review that is ordered to be conducted under Subsection 62A-16-201(6).

424 (2) Except as provided in Subsection (5), a committee described in Subsection (1):

425 (a) shall include the following members:

426 (i) the department's fatality review coordinator, who shall designate a member of the
 427 committee to serve as chair of the committee;

428 (ii) a member of the board, if there is a board, of the relevant division or office;

429 (iii) the attorney general or the attorney general's designee;

430 (iv) (A) a member of the management staff of the relevant division or office; or

431 (B) a person who is a supervisor, or a higher level position, from a region that did not
 432 have jurisdiction over the qualified individual; and

433 (v) a member of the department's risk management services; and

434 (b) may include the following members:

435 (i) a health care professional;

436 (ii) a law enforcement officer; or

437 (iii) a representative of the Office of Public Guardian.

438 (3) If a death that is subject to formal review involves a qualified individual described
439 in Subsection 62A-16-102(2)(c) or (d), the committee may also include:

440 (a) a health care professional;

441 (b) a law enforcement officer;

442 (c) the director of the Office of Guardian ad Litem;

443 (d) an employee of the division who may be able to provide information or expertise
444 that would be helpful to the formal review; or

445 (e) a professional whose knowledge or expertise may significantly contribute to the
446 formal review.

447 (4) A committee described in Subsection (1) may also include a person whose
448 knowledge or expertise may significantly contribute to the formal review.

449 (5) A committee described in this section may not include an individual who was
450 involved in, or who supervises a person who was involved in, the fatality.

451 (6) Each member of a committee described in this section who is not an employee of
452 the department shall sign a form, created by the department, indicating that the member agrees
453 to:

454 (a) keep all information relating to a fatality review confidential; and

455 (b) not release any information relating to a fatality review, unless required or
456 permitted by law to release the information.

457 Section 11. Section **62A-16-203** is enacted to read:

458 **62A-16-203. Fatality Review Committees for a deceased resident of the Utah State**
459 **Hospital or the Utah State Developmental Center.**

460 (1) If a qualified individual who is the subject of a formal fatality review that is ordered
461 to be conducted under Subsection 62A-16-201(6), was a resident of the Utah State Hospital or
462 the Utah State Developmental Center, the fatality review coordinator of that facility shall
463 organize a fatality review committee to review the fatality.

464 (2) Except as provided in Subsection (4), a committee described in Subsection (1) shall

465 include the following members:

466 (a) the fatality review coordinator for the facility, who shall serve as chair of the
467 committee;

468 (b) a member of the management staff of the facility;

469 (c) a supervisor of a unit other than the one in which the qualified individual resided;

470 (d) a physician;

471 (e) a representative from the administration of the division that oversees the facility;

472 (f) the department's fatality review coordinator;

473 (g) a member of the department's risk management services; and

474 (h) a citizen who is not an employee of the department.

475 (3) A committee described in Subsection (1) may also include a person whose
476 knowledge or expertise may significantly contribute to the formal review.

477 (4) A committee described in this section may not include an individual who:

478 (a) was involved in, or who supervises a person who was involved in, the fatality; or

479 (b) has a conflict with the fatality review.

480 Section 12. Section **62A-16-204** is enacted to read:

481 **62A-16-204. Fatality Review Committee Proceedings.**

482 (1) A majority vote of committee members present constitutes the action of the
483 committee.

484 (2) The department shall give the committee access to all reports, records, and other
485 documents that are relevant to the fatality under investigation, including:

486 (a) narrative reports;

487 (b) case files;

488 (c) autopsy reports; and

489 (d) police reports, unless the report is protected from disclosure under Subsection
490 63G-2-305(9) or (10).

491 (3) The Utah State Hospital and the Utah State Developmental Center shall provide
492 protected health information to the committee if requested by a fatality review coordinator.

493 (4) A committee shall convene its first meeting within 14 days after the day on which a
494 formal fatality review is ordered under Subsection 62a-16-201(6), unless this time is extended,
495 for good cause, by the director of the Office of Services Review.

496 (5) A committee may interview a staff member, a provider, or any other person who
 497 may have knowledge or expertise that is relevant to the fatality review.

498 (6) A committee shall render an advisory opinion regarding:

499 (a) whether the provisions of law, rule, policy, and procedure relating to the deceased
 500 individual and the deceased individual's family were complied with;

501 (b) whether the fatality was responded to properly;

502 (c) whether to recommend that a law, rule, policy, or procedure be changed; and

503 (d) whether additional training is needed.

504 Section 13. Section **62A-16-301** is enacted to read:

505 **Part 3. Reporting and Review**

506 **62A-16-301. Fatality review committee report -- Response to report.**

507 (1) Within 20 days after the day on which the committee proceedings described in
 508 Section 62A-16-204 end, the committee shall submit:

509 (a) a written report to the executive director that includes:

510 (i) the advisory opinions made under Subsection 62A-16-204(5); and

511 (ii) any recommendations regarding action that should be taken in relation to an
 512 employee of the department or a person who contracts with the department; and

513 (b) a copy of the report described in Subsection (1)(a), with only identifying
 514 information redacted, to:

515 (i) the director of the office or division to which the fatality relates; and

516 (ii) the Office of Legislative Research and General Counsel.

517 (2) Within 20 days after the day on which the director described in Subsection(1)(b)(i)
 518 receives a copy of the report described in Subsection (1)(a), the director shall provide a written
 519 response to the executive director, a copy of the response, with only identifying information
 520 redacted, to the Office of Legislative Research and General Counsel, and an unredacted copy of
 521 the response to the director of the Office of Services Review, if the report:

522 (a) indicates that a law, rule, policy, or procedure was not complied with;

523 (b) indicates that the fatality was not responded to properly;

524 (c) recommends that a law, rule, policy, or procedure be changed; or

525 (d) indicates that additional training is needed.

526 (3) The response described in Subsection (2) shall include a plan of action to

527 implement any recommended improvements within the office or division.

528 (4) Within 30 days after the day on which the executive director receives the response
529 described in Subsection (2), the executive director, or the executive director's designee shall:

530 (a) review the action plan described in Subsection (3);

531 (b) make any written response that the executive director or the executive director's
532 designee determines is necessary;

533 (c) provide a copy of the written response described in Subsection (4)(b), with only
534 identifying information redacted, to the Office of Legislative Research and General Counsel;

535 and

536 (d) provide an unredacted copy of the response described in Subsection (4)(b) to the
537 director of the Office of Services Review.

538 (5) A report described in Subsection (1) and each response described in this section is a
539 protected record.

540 (6) A report described in Subsection (1) and each response described in this section is
541 not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, or
542 administrative proceeding, nor shall any individual or organization with lawful access to the
543 data be compelled to testify with regard to a report described in Subsection (1) or a response
544 described in this section.

545 Section 14. Section **62A-16-302** is enacted to read:

546 **62A-16-302. Reporting to, and review by, legislative committees.**

547 (1) The Office of Legislative Research and General Counsel shall provide a copy of the
548 report described in Subsection 62A-16-301(1)(b), and the responses described in Subsections
549 62A-16-301(2) and (4)(c) to the chairs of:

550 (a) the Health and Human Services Interim Committee; or

551 (b) if the individual who is the subject of the report was, at the time of death, a person
552 described in Subsection 62A-16-102(2)(c) or (d), the Child Welfare Legislative Oversight
553 Panel.

554 (2) (a) The Health and Human Service Interim Committee may, in a closed meeting,
555 review a report described in Subsection 62A-16-301(1)(b).

556 (b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a
557 report described in Subsection (1)(b).

558 (3) (a) Neither the Health and Human Service Interim Committee nor the Child
559 Welfare Legislative Oversight Panel may interfere with, or make recommendations regarding,
560 the resolution of a particular case.

561 (b) The purpose of a review described in Subsection (2) is to assist a committee or
562 panel described in Subsection (2) in determining whether to recommend a change in the law.

563 (c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a
564 change in the law shall be made in an open meeting.

565 (4) On or before September 1 of each year, the department shall provide an executive
566 summary of all fatality review reports for the preceding state fiscal year to:

567 (a) the Health and Human Services Interim Committee; and

568 (b) the Child Welfare Legislative Oversight Panel.

569 (5) The executive summary described in Subsection (4):

570 (a) may not include any names or identifying information; and

571 (b) shall include:

572 (i) all recommendations regarding changes to the law that were made during the
573 preceding fiscal year under Subsection 62A-16-204(5);

574 (ii) all changes made, or in the process of being made, to a law, rule, policy, or
575 procedure in response to a fatality review that occurred during the preceding fiscal year;

576 (iii) a description of the training that has been completed in response to a fatality
577 review that occurred during the preceding fiscal year;

578 (iv) statistics for the preceding fiscal year regarding:

579 (A) the number and type of fatalities of qualified individuals that are known to the
580 department;

581 (B) the number of formal fatality reviews conducted;

582 (C) the categories, described in Subsection 62A-16-102(2) of qualified individuals who
583 died;

584 (D) the gender, age, race, and other significant categories of qualified individuals who
585 died and;

586 (E) the number of fatalities of qualified individuals known to the department that are
587 identified as suicides; and

588 (v) action taken by the Office of Licensing and the Bureau of Internal Review and

589 Audits in response to the fatality of a qualified individual.

590 Section 15. Section **63G-2-202** is amended to read:

591 **63G-2-202. Access to private, controlled, and protected documents.**

592 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity
593 shall disclose a private record to:

594 (a) the subject of the record;

595 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
596 record;

597 (c) the legal guardian of a legally incapacitated individual who is the subject of the
598 record;

599 (d) any other individual who:

600 (i) has a power of attorney from the subject of the record;

601 (ii) submits a notarized release from the subject of the record or the individual's legal
602 representative dated no more than 90 days before the date the request is made; or

603 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a
604 health care provider, as defined in Section 26-33a-102, if releasing the record or information in
605 the record is consistent with normal professional practice and medical ethics; or

606 (e) any person to whom the record must be provided pursuant to:

607 (i) court order as provided in Subsection (7); or

608 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
609 Powers.

610 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

611 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
612 a government public health agency upon submission of:

613 (A) a release from the subject of the record that is dated no more than 90 days prior to
614 the date the request is made; and

615 (B) a signed acknowledgment of the terms of disclosure of controlled information as
616 provided by Subsection (2)(b); and

617 (ii) any person to whom the record must be disclosed pursuant to:

618 (A) a court order as provided in Subsection (7); or

619 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

620 Powers.

621 (b) A person who receives a record from a governmental entity in accordance with
622 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
623 including the subject of the record.

624 (3) If there is more than one subject of a private or controlled record, the portion of the
625 record that pertains to another subject shall be segregated from the portion that the requester is
626 entitled to inspect.

627 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
628 entity shall disclose a protected record to:

629 (a) the person who submitted the record;

630 (b) any other individual who:

631 (i) has a power of attorney from all persons, governmental entities, or political
632 subdivisions whose interests were sought to be protected by the protected classification; or

633 (ii) submits a notarized release from all persons, governmental entities, or political
634 subdivisions whose interests were sought to be protected by the protected classification or from
635 their legal representatives dated no more than 90 days prior to the date the request is made;

636 (c) any person to whom the record must be provided pursuant to:

637 (i) a court order as provided in Subsection (7); or

638 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
639 Powers; or

640 (d) the owner of a mobile home park, subject to the conditions of Subsection
641 41-1a-116(5).

642 (5) A governmental entity may disclose a private, controlled, or protected record to
643 another governmental entity, political subdivision, another state, the United States, or a foreign
644 government only as provided by Section 63G-2-206.

645 (6) Before releasing a private, controlled, or protected record, the governmental entity
646 shall obtain evidence of the requester's identity.

647 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
648 signed by a judge from a court of competent jurisdiction, provided that:

649 (a) the record deals with a matter in controversy over which the court has jurisdiction;

650 (b) the court has considered the merits of the request for access to the record; and

651 (c) the court has considered and, where appropriate, limited the requester's use and
652 further disclosure of the record in order to protect:

- 653 (i) privacy interests in the case of private or controlled records;
- 654 (ii) business confidentiality interests in the case of records protected under Subsection
655 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
- 656 (iii) privacy interests or the public interest in the case of other protected records;
- 657 (d) to the extent the record is properly classified private, controlled, or protected, the
658 interests favoring access, considering limitations thereon, outweigh the interests favoring
659 restriction of access; and
- 660 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
661 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

662 (8) (a) A governmental entity may disclose or authorize disclosure of private or
663 controlled records for research purposes if the governmental entity:

- 664 (i) determines that the research purpose cannot reasonably be accomplished without
665 use or disclosure of the information to the researcher in individually identifiable form;
- 666 (ii) determines that:
 - 667 (A) the proposed research is bona fide; and
 - 668 (B) the value of the research outweighs the infringement upon personal privacy;
- 669 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
670 the records; and
- 671 (B) requires the removal or destruction of the individual identifiers associated with the
672 records as soon as the purpose of the research project has been accomplished;
- 673 (iv) prohibits the researcher from:
 - 674 (A) disclosing the record in individually identifiable form, except as provided in
675 Subsection (8)(b); or
 - 676 (B) using the record for purposes other than the research approved by the governmental
677 entity; and
- 678 (v) secures from the researcher a written statement of the researcher's understanding of
679 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
680 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
681 under Section 63G-2-801.

682 (b) A researcher may disclose a record in individually identifiable form if the record is
683 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
684 or disclosure of the record in individually identifiable form will be made by the auditor or
685 evaluator except as provided by this section.

686 (c) A governmental entity may require indemnification as a condition of permitting
687 research under this Subsection (8).

688 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity
689 may disclose to persons other than those specified in this section records that are:

690 (i) private under Section 63G-2-302; or

691 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
692 business confidentiality has been made under Section 63G-2-309.

693 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the
694 disclosure to persons other than those specified in this section of records that are:

695 (i) private under Section 63G-2-302;

696 (ii) controlled under Section 63G-2-304; or

697 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
698 business confidentiality has been made under Section 63G-2-309.

699 (c) Under Subsection 63G-2-404(8), the court may require the disclosure of records
700 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected
701 under Section 63G-2-305 to persons other than those specified in this section.

702 (10) A record contained in the Management Information System, created in Section
703 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
704 disclosed to any person except the person who is alleged in the report to be a perpetrator of
705 abuse, neglect, or dependency.

706 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be
707 disclosed as provided in Subsection (1)(e).

708 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed
709 as provided in Subsection (4)(c) or Section 62A-3-312.

710 (12) (a) A private, protected, or controlled record described in Section 62A-16-301
711 shall be disclosed as required under:

712 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

713 (ii) Subsection 62A-16-302(1).

714 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,

715 protected, or controlled.

716 Section 16. **Repealer.**

717 This bill repeals:

718 Section **62A-4a-202.5**, Law enforcement investigation of alleged abuse in foster care.

Legislative Review Note
as of 12-1-09 10:36 AM

Office of Legislative Research and General Counsel