

Chapter 5 Services for People with Disabilities

Part 1 Services for People with Disabilities

62A-5-101 Definitions.

As used in this chapter:

- (1) "Approved provider" means a person approved by the division to provide home-based services.
- (2) "Board" means the Utah State Developmental Center Board created under Section 62A-5-202.5.
- (3)
 - (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.
 - (b) "Brain injury" does not include a deteriorating disease.
- (4) "Designated intellectual disability professional" means:
 - (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
 - (i)
 - (A) has at least one year of specialized training in working with persons with an intellectual disability; or
 - (B) has at least one year of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or
 - (b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
 - (i) has at least two years of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability.
- (5) "Deteriorating disease" includes:
 - (a) multiple sclerosis;
 - (b) muscular dystrophy;
 - (c) Huntington's chorea;
 - (d) Alzheimer's disease;
 - (e) ataxia; or
 - (f) cancer.
- (6) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2, Utah State Developmental Center.
- (7) "Direct service worker" means a person who provides services to a person with a disability:
 - (a) when the services are rendered in:
 - (i) the physical presence of the person with a disability; or
 - (ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and
 - (b)
 - (i) under a contract with the division;
 - (ii) under a grant agreement with the division; or
 - (iii) as an employee of the division.
- (8) "Director" means the director of the Division of Services for People with Disabilities.

- (9)
- (a) "Disability" means a severe, chronic disability that:
 - (i) is attributable to:
 - (A) an intellectual disability;
 - (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;
 - (C) a physical disability; or
 - (D) a brain injury;
 - (ii) is likely to continue indefinitely;
 - (iii)
 - (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:
 - (I) self-care;
 - (II) receptive and expressive language;
 - (III) learning;
 - (IV) mobility;
 - (V) self-direction;
 - (VI) capacity for independent living; or
 - (VII) economic self-sufficiency; or
 - (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or more of the following areas:
 - (I) memory or cognition;
 - (II) activities of daily life;
 - (III) judgment and self-protection;
 - (IV) control of emotions;
 - (V) communication;
 - (VI) physical health; or
 - (VII) employment; and
 - (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:
 - (A) may continue throughout life; and
 - (B) must be individually planned and coordinated.
 - (b) "Disability" does not include a condition due solely to:
 - (i) mental illness;
 - (ii) personality disorder;
 - (iii) hearing impairment;
 - (iv) visual impairment;
 - (v) learning disability;
 - (vi) behavior disorder;
 - (vii) substance abuse; or
 - (viii) the aging process.
- (10) "Division" means the Division of Services for People with Disabilities.
- (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive services that are administered by the division.
- (12) "Endorsed program" means a facility or program that:
- (a) is operated:
 - (i) by the division; or

- (ii) under contract with the division; or
 - (b) provides services to a person committed to the division under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.
- (13) "Licensed physician" means:
- (a) an individual licensed to practice medicine under:
 - (i) Title 58, Chapter 67, Utah Medical Practice Act; or
 - (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (b) a medical officer of the United States Government while in this state in the performance of official duties.
- (14) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.
- (15) "Public funds" means state or federal funds that are disbursed by the division.
- (16) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.

Amended by Chapter 300, 2016 General Session

62A-5-102 Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

- (1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department.
- (2) In accordance with this chapter, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state.
- (3) Within appropriations from the Legislature, the division shall provide services to any person with a disability who is eligible to receive division services.
- (4)
 - (a) Starting on July 1, 2013, any new appropriations designated to serve eligible persons waiting for services from the division shall be allocated as set forth in this section.
 - (b) Eighty-five percent of the money appropriated in Subsection (4)(a) shall be allocated, as determined by the division by rule based on the:
 - (i) severity of the disability;
 - (ii) urgency of the need for services;
 - (iii) ability of a parent or guardian to provide the person with appropriate care and supervision; and
 - (iv) length of time during which the person has not received services from the division.
 - (c) Fifteen percent of the money appropriated in Subsection (4)(a) shall be allocated for respite services, and the division shall:
 - (i) establish rules to identify a person whose only need is respite services;
 - (ii) allocate money under this Subsection (4)(c) to the people described in Subsection (4)(c)(i) based on random selection; and
 - (iii) if all persons described in Subsection (4)(c)(i) have been served and there is money remaining for respite care under this Subsection (4)(c), the division shall use the remaining money as described in Subsection (4)(b).
 - (d) Funds from Subsection (4)(b) that are not spent by the division at the end of the fiscal year may be used as set forth in Subsection (7).
- (5) The division:

- (a) has the functions, powers, duties, rights, and responsibilities described in Section 62A-5-103; and
 - (b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out the responsibilities described in Subsection (5)(a).
- (6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support that the division provides to any person with a disability:
- (a) are provided in the least restrictive and most enabling environment;
 - (b) ensure opportunities to access employment; and
 - (c) enable reasonable personal choice in selecting services and support that:
 - (i) best meet individual needs; and
 - (ii) promote:
 - (A) independence;
 - (B) productivity; and
 - (C) integration in community life.
- (7)
- (a) Appropriations to the division are nonlapsing.
 - (b) If an individual receiving services under Subsection (4)(b) or (c) ceases to receive those services, the division shall use the funds that were allocated to that individual to provide services to another eligible individual waiting for services as described in Subsection (4)(b).
 - (c) Funds unexpended by the division at the end of the fiscal year may be used only for one-time expenditures unless otherwise authorized by the Legislature.
 - (d) A one-time expenditure under this section:
 - (i) is not an entitlement;
 - (ii) may be withdrawn at any time; and
 - (iii) may provide short-term, limited services, including:
 - (A) respite care;
 - (B) service brokering;
 - (C) family skill building and preservation classes;
 - (D) after school group services; and
 - (E) other professional services.

Amended by Chapter 172, 2013 General Session

62A-5-103 Responsibility and authority of division.

- (1) For purposes of this section "administer" means to:
- (a) plan;
 - (b) develop;
 - (c) manage;
 - (d) monitor; and
 - (e) conduct certification reviews.
- (2) The division has the authority and responsibility to:
- (a) administer an array of services and supports for persons with disabilities and their families throughout the state;
 - (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a);
 - (c) consistent with Section 62A-5-206, supervise the programs and facilities of the Developmental Center;

- (d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of:
 - (i) outreach;
 - (ii) information and referral;
 - (iii) prevention;
 - (iv) technical assistance; and
 - (v) public awareness;
 - (e) supervise the programs and facilities operated by, or under contract with, the division;
 - (f) cooperate with other state, governmental, and private agencies that provide services to a person with a disability;
 - (g) subject to Subsection (3), ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures designed to minimize the risk of error when a person with a disability is admitted to an intermediate care facility for people with an intellectual disability, including:
 - (i) the developmental center; and
 - (ii) facilities within the community;
 - (h) determine whether to approve providers;
 - (i) monitor and sanction approved providers, as specified in the providers' contract;
 - (j) subject to Section 62A-5-103.5, receive and disburse public funds;
 - (k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;
 - (l) establish standards and rules for the administration and operation of programs conducted by, or under contract with, the division;
 - (m) approve and monitor division programs to insure compliance with the board's rules and standards;
 - (n) establish standards and rules necessary to fulfill the division's responsibilities under Part 2, Utah State Developmental Center, and Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, with regard to an intermediate care facility for people with an intellectual disability;
 - (o) assess and collect equitable fees for a person who receives services provided under this chapter;
 - (p) maintain records of, and account for, the funds described in Subsection (2)(o);
 - (q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:
 - (i) applying to receive the services; or
 - (ii) currently receiving the services;
 - (r) in accordance with state law, establish rules:
 - (i) relating to an intermediate care facility for people with an intellectual disability that is an endorsed program; and
 - (ii) governing the admission, transfer, and discharge of a person with a disability;
 - (s) manage funds for a person residing in a facility operated by the division:
 - (i) upon request of a parent or guardian of the person; or
 - (ii) under administrative or court order; and
 - (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons with Disabilities.
- (3) The due process procedures described in Subsection (2)(g):
- (a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and

- (b) with regard to facilities in the community, do not require commitment to the division.

Amended by Chapter 366, 2011 General Session

62A-5-103.1 Program for provision of supported employment services.

- (1) There is established a program for the provision of supported employment services to be administered by the division.
- (2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of the program described in this section.
- (3) In accordance with Subsection (4), within funds appropriated by the Legislature for the program described in this section, the division shall provide supported employment services to a person with a disability who:
 - (a) is eligible to receive services from the division;
 - (b) has applied for, and is waiting to, receive services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient supported employment services from other sources;
 - (e) the division determines would substantially benefit from the provision of supported employment services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of supported employment services.
- (4)
 - (a) The division shall provide supported employment services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (5) It is the intent of the Legislature that the services provided under the program described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.
- (6) The division shall report to the Health and Human Services Interim Committee in even calendar years regarding the success and progress of employment services offered under this section.

Amended by Chapter 125, 2013 General Session

62A-5-103.2 Pilot Program for the Provision of Family Preservation Services.

- (1) There is established a pilot program for the provision of family preservation services to a person with a disability and that person's family, beginning on July 1, 2007, and ending on July 1, 2009.
- (2) The family preservation services described in Subsection (1) may include:
 - (a) family skill building classes;
 - (b) respite hours for class attendance; or
 - (c) professional intervention.

- (3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of this section.
- (4) In accordance with Subsection (5), within funds appropriated by the Legislature for the pilot program described in this section, the division shall provide family preservation services to a person with a disability, and that person's family, if that person:
 - (a) is eligible to receive services from the division;
 - (b) has applied for, and is willing to receive, services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient family preservation services from other sources;
 - (e) is determined by the division to be a person who would substantially benefit from the provision of family preservation services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of family preservation services.
- (5)
 - (a) The division shall provide family preservation services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (6) It is the intent of the Legislature that the services provided under the pilot program described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.

Amended by Chapter 29, 2009 General Session

62A-5-103.3 Employment first emphasis on the provision of services.

- (1) When providing services to a person with a disability under this chapter, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment that enables the person to:
 - (a) purchase goods and services;
 - (b) establish self-sufficiency; and
 - (c) exercise economic control of the person's life.
- (2) The division shall develop a written plan to implement the policy described in Subsection (1) that includes:
 - (a) assessing the strengths and needs of a person with a disability;
 - (b) customizing strength-based approaches to obtaining employment;
 - (c) expecting, encouraging, providing, and rewarding:
 - (i) integrated employment in the workplace at competitive wages and benefits; and
 - (ii) self-employment;
 - (d) developing partnerships with potential employers;
 - (e) maximizing appropriate employment training opportunities;
 - (f) coordinating services with other government agencies and community resources;

- (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and
 - (h) arranging sub-minimum wage work or volunteer work when employment at market rates cannot be obtained.
- (3) The division shall, on an annual basis:
- (a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);
 - (b) determine whether the goals for the previous year have been met; and
 - (c) modify the plan described in Subsection (2) as needed.

Enacted by Chapter 169, 2011 General Session

62A-5-103.5 Disbursal of public funds -- Background check of a direct service worker.

- (1) For purposes of this section, "office" means the same as that term is defined in Section 62A-2-101.
- (2) Public funds may not be disbursed to pay a direct service worker for personal services rendered to a person unless the office approves the direct service worker to have direct access and provide services to a child or a vulnerable adult pursuant to Section 62A-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:
- (a) before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for a license under Section 62A-2-120.
- (4) A child who is in the legal custody of the department or any of the department's divisions may not be placed with a direct service worker unless, before the child is placed with the direct service worker, the direct service worker passes a background check, pursuant to the requirements of Subsection 62A-2-120(13).
- (5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:
- (a) the provisions of this section are not applicable to a direct service worker employed by the public transit district; and
 - (b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:
 - (i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 62A-2-120; and
 - (ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

Amended by Chapter 255, 2015 General Session

62A-5-104 Director -- Qualifications -- Responsibilities.

- (1) The director of the division shall be appointed by the executive director.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities, intellectual disabilities, and other disabilities.
- (3) The director is the administrative head of the division.

- (4) The director shall appoint the superintendent of the developmental center and the necessary and appropriate administrators for other facilities operated by the division with the concurrence of the executive director.

Amended by Chapter 369, 2012 General Session

62A-5-105 Division responsibilities -- Policy mediation.

- (1) The division shall establish its rules in accordance with:
 - (a) the policy of the Legislature as set forth by this chapter; and
 - (b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The division shall:
 - (a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;
 - (b) establish rules for the assessment and collection of fees for programs within the division;
 - (c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay and implement the schedule with respect to service recipients and their families where not otherwise prohibited by federal law or regulation or not otherwise provided for in Section 62A-5-109;
 - (d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;
 - (e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection (2)(d);
 - (f) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding;
 - (g) review implementation and compliance by the division with policies established by the board to ensure that the policies established by the Legislature in this chapter are carried out; and
 - (h) annually report to the executive director.
- (3) The executive director shall mediate any differences which arise between the policies of the division and those of any other policy board or division in the department.

Amended by Chapter 167, 2013 General Session

62A-5-106 Powers of other state agencies -- Severability.

Nothing in this part shall be construed to supersede or limit the authority granted by law to any other state agency. If any provision of this part, or the application of any provision to the person or circumstance, is held invalid, the remainder of this part shall not be affected.

Enacted by Chapter 1, 1988 General Session

62A-5-109 Parent liable for cost and support of minor -- Guardian liable for costs.

- (1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for the support of the child in accordance with Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services, until the person reaches 18 years of age.
- (2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available

in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 62A-5-110, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.

- (3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or guardian for the support or maintenance of that person, it shall be repaid upon demand.

Amended by Chapter 3, 2008 General Session

62A-5-110 Discretionary trusts for persons with disabilities -- Impact on state services.

(1) For purposes of this section:

(a) "Discretionary trust for a person with disabilities" means a trust:

- (i) that is established for the benefit of an individual who, at the time the trust is created, is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;
- (ii) under which the trustee has discretionary power to determine distributions;
- (iii) under which the beneficiary may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;
- (iv) that contains the assets of the beneficiary and is established for the benefit of the beneficiary by a parent, grandparent, legal guardian, or court;
- (v) that is irrevocable, except that the trust document may provide that the trust be terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec. 1382c;
- (vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and
- (vii) providing that, upon the death of the beneficiary, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the beneficiary.

(b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

(2) A state agency providing services or support to a person with disabilities may:

- (a) waive application of Subsection (1)(a)(v) with respect to that individual if it determines that application of the criteria would place an undue hardship upon that individual; and
- (b) define, by rule, what constitutes "undue hardship" for purposes of this section.

(3) A discretionary trust for a person with disabilities is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:

- (a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the beneficiary with a disability; or
- (b) as provided in Subsection (1)(a)(vi).

(4) Property, goods, and services that are purchased or owned by a discretionary trust for a person with disabilities and that are used or consumed by a beneficiary with a disability shall not be considered trust property that is distributed to or under the control of the beneficiary.

(5) The benefits that a person with disabilities is otherwise legally entitled to may not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that person.

- (6) All state agencies shall disregard a discretionary trust for a person with disabilities, as defined in Subsection (1), as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.
- (7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

Amended by Chapter 366, 2011 General Session

Part 2

Utah State Developmental Center

62A-5-201 Utah State Developmental Center.

- (1) The intermediate care facility for people with an intellectual disability located in American Fork City, Utah County, shall be known as the "Utah State Developmental Center."
- (2) Within appropriations authorized by the Legislature, the role and function of the developmental center is to:
 - (a) provide care, services, and treatment to persons described in Subsection (3); and
 - (b) provide the following services and support to persons with disabilities who do not reside at the developmental center:
 - (i) psychiatric testing;
 - (ii) specialized medical and dental treatment and evaluation;
 - (iii) family and client special intervention;
 - (iv) crisis management;
 - (v) occupational, physical, speech, and audiology services; and
 - (vi) professional services, such as education, evaluation, and consultation, for families, public organizations, providers of community and family support services, and courts.
- (3) Except as provided in Subsection (6), within appropriations authorized by the Legislature, and notwithstanding the provisions of Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, only the following persons may be residents of, be admitted to, or receive care, services, or treatment at the developmental center:
 - (a) persons with an intellectual disability;
 - (b) persons who receive services and supports under Subsection (2)(b); and
 - (c) persons who require at least one of the following services from the developmental center:
 - (i) continuous medical care;
 - (ii) intervention for conduct that is dangerous to self or others; or
 - (iii) temporary residential assessment and evaluation.
- (4)
 - (a) Except as provided in Subsection (6), the division shall, in the division's discretion:
 - (i) place residents from the developmental center into appropriate less restrictive placements; and
 - (ii) determine each year the number to be placed based upon the individual assessed needs of the residents.
 - (b) The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.
- (5) Except as provided in Subsection (7), within appropriations authorized by the Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to an Intermediate Care

Facility for People with an Intellectual Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing that the developmental center is the most appropriate placement for that person.

- (6)
- (a) If the division determines, pursuant to Utah's Community Supports Waiver (CSW) for Individuals with Intellectual Disabilities and Other Related Conditions, that a person who otherwise qualifies for placement in an intermediate care facility for people with an intellectual disability should receive services in a home or community-based setting, the division shall:
 - (i) if the person does not have a legal representative or legal guardian:
 - (A) inform the person of any feasible alternatives under the waiver; and
 - (B) give the person the choice of being placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting; or
 - (ii) if the person has a legal representative or legal guardian:
 - (A) inform the legal representative or legal guardian of any feasible alternatives under the waiver; and
 - (B) give the legal representative or legal guardian the choice of having the person placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting.
 - (b) If a person chooses, under Subsection (6)(a)(i), to be placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:
 - (i) ask the person whether the person prefers to be placed in the developmental center rather than a private intermediate care facility for people with an intellectual disability; and
 - (ii) if the person expresses a preference to be placed in the developmental center:
 - (A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or
 - (B)
 - (I) strongly consider the person's preference to be placed in the developmental center if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and
 - (II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.
 - (c) If a legal representative or legal guardian chooses, under Subsection (6)(a)(ii), to have the person placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:
 - (i) ask the legal representative or legal guardian whether the legal representative or legal guardian prefers to have the person placed in the developmental center rather than a private intermediate care facility for people with an intellectual disability; and
 - (ii) if the legal representative or legal guardian expresses a preference to have the person placed in the developmental center:
 - (A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or
 - (B)
 - (I) strongly consider the legal representative's or legal guardian's preference for the person's placement if the cost of placing the person in the developmental center exceeds the cost

of placing the person in a private intermediate care facility for people with an intellectual disability; and

(II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.

(7) The certification described in Subsection (5) is not required for a person who receives services and support under Subsection (2)(b).

Amended by Chapter 366, 2011 General Session

62A-5-202 Developmental center within division.

The programs and facilities of the developmental center are within the division, and under the policy direction of the division.

Amended by Chapter 75, 2009 General Session

62A-5-202.5 Utah State Developmental Center Board -- Creation -- Membership -- Duties -- Powers.

(1) There is created the Utah State Developmental Center Board within the Department of Human Services.

(2) The board is composed of nine members as follows:

(a) the director of the division or the director's designee;

(b) the superintendent of the developmental center or the superintendent's designee;

(c) the executive director of the Department of Human Services or the executive director's designee;

(d) a resident of the developmental center selected by the superintendent; and

(e) five members appointed by the governor with the advice and consent of the Senate as follows:

(i) three members of the general public; and

(ii) two members who are parents or guardians of individuals who receive services at the developmental center.

(3) In making appointments to the board, the governor shall ensure that:

(a) no more than three members have immediate family residing at the developmental center; and

(b) members represent a variety of geographic areas and economic interests of the state.

(4)

(a) The governor shall appoint each member described in Subsection (2)(e) for a term of four years.

(b) An appointed member may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

(c) Notwithstanding the requirements of Subsections (4)(a) and (b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of appointed members are staggered so that approximately half of the appointed members are appointed every two years.

(d) Appointed members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 120 days after the formal expiration of a term.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

- (5)
 - (a) The director shall serve as the chair.
 - (b) The board shall appoint a member to serve as vice chair.
 - (c) The board shall hold meetings quarterly or as needed.
 - (d) Five members are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.
 - (e) The chair shall be a non-voting member except that the chair may vote to break a tie vote between the voting members.
- (6) An appointed member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7)
 - (a) The board shall adopt bylaws governing the board's activities.
 - (b) Bylaws shall include procedures for removal of a member who is unable or unwilling to fulfill the requirements of the member's appointment.
- (8) The board shall:
 - (a) act for the benefit of the developmental center and the division;
 - (b) advise and assist the division with the division's functions, operations, and duties related to the developmental center, described in Sections 62A-5-102, 62A-5-103, 62A-5-201, 62A-5-203, and 62A-5-206;
 - (c) administer the Utah State Developmental Center Miscellaneous Donation Fund, as described in Section 62A-5-206.5;
 - (d) administer the Utah State Developmental Center Land Fund, as described in Section 62A-5-206.6; and
 - (e) approve the sale, lease, or other disposition of real property or water rights associated with the developmental center, as described in Subsection 62A-5-206.6(5).

Enacted by Chapter 300, 2016 General Session

62A-5-203 Operation, maintenance, and repair of developmental center buildings and grounds.

- (1) The division shall operate, maintain, and repair the buildings, grounds, and physical properties of the developmental center. However, the roads and driveways on the grounds of the developmental center shall be maintained by the Department of Transportation.
- (2) The division has authority to make improvements to the buildings, grounds, and physical properties of the developmental center, as it deems necessary for the care and safety of the residents.

Amended by Chapter 207, 1991 General Session

62A-5-205 State Board of Education -- Education of children at developmental center.

- (1) The State Board of Education is responsible for the education of school-aged children at the developmental center.

- (2) In order to fulfill its responsibility under Subsection (1), the State Board of Education shall, where feasible, contract with local school districts or other appropriate agencies to provide educational and related administrative services.
- (3) Medical, residential, and other services that are not the responsibility of the State Board of Education or other state agencies are the responsibility of the division.

Amended by Chapter 207, 1991 General Session

62A-5-206 Powers and duties of division.

The powers and duties of the division, with respect to the developmental center are as follows:

- (1) to establish rules, not inconsistent with law, for the government of the developmental center;
- (2) to establish rules governing the admission and discharge of persons with an intellectual disability in accordance with state law;
- (3) to employ necessary medical and other professional personnel to assist in establishing rules relating to the developmental center and to the treatment and training of persons with an intellectual disability at the center;
- (4) to transfer a person who has been committed to the developmental center under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, to any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facilities or programs available meet the needs indicated, and if transfer would be in the best interest of that person. A person transferred shall remain under the jurisdiction of the division;
- (5) the developmental center may receive a person who meets the requirements of Subsection 62A-5-201(3) from any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facility or programs of the developmental center meet those needs, and if transfer would be in the best interest of that person. A person so received by the developmental center remains under the jurisdiction of the division;
- (6) to manage funds for a person residing in the developmental center, upon request by that person's parent or guardian, or upon administrative or court order;
- (7) to charge and collect a fair and equitable fee from developmental center residents, parents who have the ability to pay, or guardians where funds for that purpose are available; and
- (8) supervision and administration of security responsibilities for the developmental center is vested in the division. The executive director may designate, as special function officers, individuals to perform special security functions for the developmental center that require peace officer authority. Those special function officers may not become or be designated as members of the Public Safety Retirement System.

Amended by Chapter 300, 2016 General Session

62A-5-206.5 Utah State Developmental Center Miscellaneous Donation Fund -- Use.

- (1) There is created an expendable special revenue fund known as the "Utah State Developmental Center Miscellaneous Donation Fund."
- (2) The board shall deposit donations made to the Utah State Developmental Center under Section 62A-1-111 into the expendable special revenue fund described in Subsection (1).
- (3) The state treasurer shall invest the money in the fund described in Subsection (1) according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and the revenue received from the investment shall remain with the fund described in Subsection (1).

- (4)
 - (a) Except as provided in Subsection (5), the money or revenue in the fund described in Subsection (1) may not be diverted, appropriated, expended, or committed to be expended for a purpose that is not listed in this section.
 - (b) Notwithstanding Section 63J-1-211, the Legislature may not appropriate money or revenue from the fund described in Subsection (1) to eliminate or otherwise reduce an operating deficit if the money or revenue appropriated from the fund is expended or committed to be expended for a purpose other than one listed in this section.
 - (c) The Legislature may not amend the purposes for which money or revenue in the fund described in Subsection (1) may be expended or committed to be expended except by the affirmative vote of two-thirds of all the members elected to each house.
- (5)
 - (a) The board shall approve expenditures of money and revenue in the fund described in Subsection (1).
 - (b) The board may expend money and revenue in the fund described in Subsection (1) only:
 - (i) as designated by the donor; or
 - (ii) for the benefit of:
 - (A) residents of the developmental center; or
 - (B) individuals with disabilities who receive services and support from the Utah State Developmental Center, as described in Subsection 62A-5-201(2)(b).
 - (c) Money and revenue in the fund described in Subsection (1) may not be used for items normally paid for by operating revenues or for items related to personnel costs without specific legislative authorization.

Amended by Chapter 300, 2016 General Session

62A-5-206.6 Utah State Developmental Center Land Fund -- Use of fund.

- (1) As used in this section, "long-term lease" means:
 - (a) a lease with a term of five years or more; or
 - (b) a lease with a term of less than five years that may be unilaterally renewed by the lessee.
- (2) Notwithstanding Section 63A-5-215, any money received by the board from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center shall be deposited in the expendable special revenue fund created in Subsection (3).
- (3)
 - (a) There is created an expendable special revenue fund known as the "Utah State Developmental Center Land Fund."
 - (b) The Division of Finance shall deposit the following money into the expendable special revenue fund:
 - (i) money from the sale, long-term lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center; and
 - (ii) money from the sale, long-term lease, or other disposition of water rights associated with the developmental center.
 - (c) The state treasurer shall invest money in the fund described in Subsection (3) according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and the revenue from the investment shall remain with the expendable special revenue fund, except as provided in Subsection (4).
 - (d)

- (i) Except as provided in Subsection (4), the money or revenue in the fund may not be diverted, appropriated, expended, or committed to be expended for a purpose that is not listed in this section.
 - (ii) Notwithstanding Section 63J-1-211, the Legislature may not appropriate money or revenue from the fund to eliminate or otherwise reduce an operating deficit if the money or revenue appropriated from the fund is expended or committed to be expended for a purpose other than one listed in this section.
 - (iii) The Legislature may not amend the purposes for which money or revenue in the fund may be expended or committed to be expended except by the affirmative vote of two-thirds of all the members elected to each house.
- (4) The board may expend money or revenue from the Utah State Developmental Center Land Fund to:
- (a) fulfill the functions of the Utah State Developmental Center as described in Sections 62A-5-201 and 62A-5-203; and
 - (b) assist the division in the division's administration of services and supports, as described in Sections 62A-5-102 and 62A-5-103.
- (5)
- (a) Notwithstanding Section 65A-4-1, any sale, long-term lease, or other disposition of real property or water rights associated with the developmental center shall be conducted as provided in this Subsection (5).
 - (b) The board shall:
 - (i) approve the sale, long-term lease, or other disposition of real property or water rights associated with the developmental center;
 - (ii) secure the approval of the Legislature before offering the real property or water rights for sale, long-term lease, or other disposition; and
 - (iii) if the Legislature's approval is secured, as described in Subsection (5)(b)(ii), direct the Division of Facilities Construction and Management to convey, lease, or dispose of the real property or water rights associated with the developmental center according to the board's determination.

Enacted by Chapter 300, 2016 General Session

62A-5-207 Superintendent -- Qualifications.

The superintendent of the developmental center, appointed in accordance with Subsection 62A-5-104(4), shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities and intellectual disability.

Amended by Chapter 366, 2011 General Session

62A-5-208 Powers and duties of superintendent.

The chief administrative officer of the developmental center is the superintendent, and has the following powers and duties:

- (1) to manage the developmental center and administer the division's rules governing the developmental center;
- (2) to hire, control, and remove all employees, and to fix their compensation according to state law; and

- (3) with the approval of the division, to make any expenditures necessary in the performance of his duties.

Amended by Chapter 207, 1991 General Session

Part 3

Admission to an Intermediate Care Facility for People with an Intellectual Disability

62A-5-302 Division responsibility.

The division is responsible:

- (1) for the supervision, care, and treatment of persons with an intellectual disability in this state who are committed to the division's jurisdiction under the provisions of this part; and
- (2) to evaluate and determine the most appropriate, least restrictive setting for an individual with an intellectual disability.

Amended by Chapter 366, 2011 General Session

62A-5-304 Limited admission of persons convicted of felony offenses.

A person with an intellectual disability who has been convicted of a felony, or if a minor, of a crime that would constitute a felony if committed by an adult, may not be admitted to an intermediate care facility for people with an intellectual disability unless it is determined by the division, in accordance with the provisions of this part and other state law, that the person may benefit from treatment in that facility.

Amended by Chapter 366, 2011 General Session

62A-5-305 Residency requirements -- Transportation of person to another state.

- (1) A person with an intellectual disability who has a parent or guardian residing in this state may be admitted to an intermediate care facility for people with an intellectual disability in accordance with the provisions of this part.
- (2) If a person with an intellectual disability enters Utah from another state, the division may have that person transported to the home of a relative or friend located outside of this state, or to an appropriate facility in the state where the person with the intellectual disability is domiciled. This section does not prevent a person with an intellectual disability who is temporarily located in this state from being temporarily admitted or committed to an intermediate care facility for people with an intellectual disability in this state.

Amended by Chapter 366, 2011 General Session

62A-5-308 Commitment -- Persons under age 18.

Beginning July 1, 1993, the director of the division or the director's designee, may commit an individual under 18 years of age who has an intellectual disability or symptoms of an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:

- (1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing

a written petition with the juvenile court under Section 62A-5-312. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court; or
(2) an emergency commitment in accordance with the provisions of Section 62A-5-311.

Amended by Chapter 366, 2011 General Session

62A-5-309 Commitment -- Person 18 years or older.

Beginning July 1, 1993, the director or his designee may commit to the division an individual 18 years of age or older who has an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:

- (1) involuntary commitment under the provisions of Section 62A-5-312; or
- (2) temporary emergency commitment under the provisions of Section 62A-5-311.

Amended by Chapter 366, 2011 General Session

62A-5-310 Involuntary commitment.

An individual may not be involuntarily committed to an intermediate care facility for people with an intellectual disability except in accordance with Sections 62A-5-311 and 62A-5-312.

Amended by Chapter 366, 2011 General Session

62A-5-311 Temporary emergency commitment -- Observation and evaluation.

- (1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to an intermediate care facility for people with an intellectual disability for observation and evaluation upon:
 - (a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:
 - (i) a belief that the individual has an intellectual disability and is likely to cause serious injury to self or others if not immediately committed;
 - (ii) personal knowledge of the individual's condition; and
 - (iii) the circumstances supporting that belief; or
 - (b) certification by a licensed physician or designated intellectual disability professional stating that the physician or designated intellectual disability professional:
 - (i) has examined the individual within a three-day period immediately preceding the certification; and
 - (ii) is of the opinion that the individual has an intellectual disability, and that because of the individual's intellectual disability is likely to injure self or others if not immediately committed.
- (2) If the individual in need of commitment is not placed in the custody of the director or the director's designee by the person submitting the application, the director's or the director's designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others.
- (3) Upon receipt of the application required by Subsection (1)(a) and the certifications required by Subsections (1)(b) and (2), a peace officer may take the individual named in the application and certificates into custody, and may transport the individual to a designated intermediate care facility for people with an intellectual disability.
- (4)
 - (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall

be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.

- (b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312.
- (5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Amended by Chapter 366, 2011 General Session

62A-5-312 Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.

- (1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:
 - (a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or
 - (b) a written statement by the petitioner that:
 - (i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;
 - (ii) is under oath; and
 - (iii) sets forth the facts on which the statement is based.
- (2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.
- (3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:
 - (a) poses an immediate danger of physical injury to self or others;
 - (b) requires involuntary commitment pending examination and hearing;
 - (c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or
 - (d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.
- (4)
 - (a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in accordance with Subsection

- (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:
 - (i) whether the director or his designee believes that the individual has an intellectual disability; and
 - (ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.
 - (b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.
- (5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.
- (6)
 - (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:
 - (i) the individual to be committed;
 - (ii) the applicant;
 - (iii) any legal guardian of the individual;
 - (iv) adult members of the individual's immediate family;
 - (v) legal counsel of the individual to be committed, if any;
 - (vi) the division; and
 - (vii) any other person to whom the individual requests, or the court designates, notice to be given.
 - (b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.
- (7) That notice shall:
 - (a) set forth the allegations of the petition and all supporting facts;
 - (b) be accompanied by a copy of any detention order issued under Subsection (3); and
 - (c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.
- (8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:
 - (a) there are no appropriate facilities for persons with an intellectual disability within the judicial district; and
 - (b) the transfer will not be adverse to the interests of the individual.
- (9)
 - (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated intellectual disability professionals. The examinations shall be conducted:
 - (i) separately;

- (ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and
 - (iii) within a reasonable period of time after appointment of the examiners by the court.
- (b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:
 - (i) the individual does not have an intellectual disability; or
 - (ii) treatment programs are available and will be used by the individual without court proceedings.
- (10)
 - (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.
 - (b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.
- (11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.
- (12)
 - (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.
 - (b) The court may, in its discretion:
 - (i) receive the testimony of any other person;
 - (ii) allow a waiver of the right to appear only for good cause shown;
 - (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and
 - (iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.
 - (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.
- (13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:
 - (a) the individual to be committed has an intellectual disability;
 - (b) because of the individual's intellectual disability one or more of the following conditions exist:
 - (i) the individual poses an immediate danger of physical injury to self or others;
 - (ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or
 - (iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or

treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available; and

(d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

(14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.

(15)

(a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.

(b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.

(16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.

(17)

(a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.

(b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.

(c) The staff of the division shall immediately:

(i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;

(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and

(iii) immediately inform the court of any discharge.

(d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.

(e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.

(18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Amended by Chapter 366, 2011 General Session

62A-5-313 Transfer -- Procedures.

- (1) The director of the division, or the director's designee, may place an involuntarily committed resident in appropriate care or treatment outside the intermediate care facility for people with an intellectual disability. During that placement, the order of commitment shall remain in effect, until the resident is discharged or the order is terminated.
- (2) If the resident, or the resident's parent or guardian, objects to a proposed placement under this section, the resident may appeal the decision to the executive director or the executive director's designee. Those appeals shall be conducted in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an objection is made, the proposed placement may not take effect until the committee holds that hearing and the executive director makes a final decision on the placement.

Amended by Chapter 366, 2011 General Session

62A-5-315 Petition for reexamination.

- (1) A resident committed under Section 62A-5-312, or his parent, spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district court of the county in which the resident is domiciled or detained.
- (2) Upon receipt of that petition, the court shall conduct proceedings under Section 62A-5-312.

Amended by Chapter 114, 2004 General Session

62A-5-316 Temporary detention.

Pending removal to an intermediate care facility for people with an intellectual disability, an individual taken into custody or ordered to be committed under this part may be detained in the individual's home, or in some other suitable facility. The individual shall not, however, be detained in a nonmedical facility used for detention of individuals charged with or convicted of penal offenses, except in a situation of extreme emergency. The division shall take reasonable measures, as may be necessary, to assure proper care of an individual temporarily detained under this part.

Amended by Chapter 366, 2011 General Session

62A-5-317 Authority to transfer resident.

- (1) The administrator of an intermediate care facility for people with an intellectual disability, or the administrator's designee, may transfer or authorize the transfer of a resident to another intermediate care facility for people with an intellectual disability if, before the transfer, the administrator conducts a careful evaluation of the resident and the resident's treatment needs, and determines that a transfer would be in the best interest of that resident. If a resident is transferred, the administrator shall give immediate notice of the transfer to the resident's spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's nearest known relative.
- (2) If a resident, or the resident's parent or guardian, objects to a proposed transfer under this section, the administrator shall conduct a hearing on the objection before a committee composed of persons selected by the administrator. That committee shall hear all evidence and make a recommendation to the administrator concerning the proposed transfer. The

transfer may not take effect until the committee holds that hearing and the administrator renders a final decision on the proposed transfer.

Amended by Chapter 366, 2011 General Session

62A-5-318 Involuntary treatment with medication -- Committee -- Findings.

- (1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:
 - (a) a licensed physician experienced in treating persons with an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;
 - (b) a psychologist who is a designated intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and
 - (c) another designated intellectual disability professional of the facility for persons with an intellectual disability, or a designee.
- (2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary treatment with medication if it determines that:
 - (a) the proposed treatment is in the medical best interest of the resident, taking into account the possible side effects as well as the potential benefits of the medication; and
 - (b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.
- (3) In making the determination described in Subsection (2), the committee shall consider the resident's general history and present condition, the specific need for medication and its possible side effects, and any previous reaction to the same or comparable medication.
- (4) Any authorization of involuntary treatment under this section shall be periodically reviewed in accordance with rules promulgated by the division.

Amended by Chapter 366, 2011 General Session

Part 4
Home-based Services

62A-5-401 Purpose.

The purpose of this part is to provide support to families in their role as primary caregivers for family members with disabilities.

Enacted by Chapter 207, 1991 General Session

62A-5-402 Scope of services -- Principles.

- (1)

- (a) To enable a person with a disability and the person's family to select services and supports that best suit their needs and preferences, the division shall, within appropriations from the Legislature, provide services and supports under this part by giving direct financial assistance to the parent or guardian of a person with a disability who resides at home.
 - (b) The dollar value of direct financial assistance is determined by the division based on:
 - (i) appropriations from the Legislature; and
 - (ii) the needs of the person with a disability.
 - (c) In determining whether to provide direct financial assistance to the family, the division shall consider:
 - (i) the family's preference; and
 - (ii) the availability of approved providers in the area where the family resides.
 - (d) If the division provides direct financial assistance, the division:
 - (i) shall require the family to account for the use of that financial assistance; and
 - (ii) shall tell the person with a disability or the person's parent or guardian how long the direct financial assistance is intended to provide services and supports before additional direct financial assistance is issued.
 - (e) Except for eligibility determination services directly connected to the provision of direct financial assistance, service coordination is not provided under this part by the division unless the person with a disability or the person's parent or guardian uses the direct financial assistance to purchase such services.
- (2) The following principles shall be used as the basis for supporting families who care for family members with disabilities:
- (a) all children, regardless of disability, should reside in a family-like environment;
 - (b) families should receive the support they need to care for their children at home;
 - (c) services should:
 - (i) focus on the person with a disability;
 - (ii) take into consideration the family of the person described in Subsection (2)(c)(i);
 - (iii) be sensitive to the unique needs, preferences, and strengths of individual families; and
 - (iv) complement and reinforce existing sources of help and support that are available to each family.

Amended by Chapter 61, 2005 General Session

62A-5-403 Services for persons under 11 years of age.

- (1) Except as provided in Subsection (2), after June 30, 1996, the division may not provide residential services to persons with disabilities who are under 11 years of age.
- (2) The prohibition of Subsection (1) does not include residential services that are provided:
 - (a) for persons in the custody of the Division of Child and Family Services;
 - (b) under a plan for home-based services, including respite and temporary residential care or services provided by a professional parent under contract with the division; or
 - (c) after a written finding by the director that out-of-home residential placement is the most appropriate way to meet the needs of the person with disabilities and his family.

Amended by Chapter 179, 1996 General Session

Amended by Chapter 318, 1996 General Session