

1 **MENTAL HEALTH AUTHORITY AND**
2 **ADMINISTRATION REFORM**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Nora B. Stephens**

6 AN ACT RELATING TO THE PUBLIC MENTAL HEALTH SYSTEM; INCREASING
7 ACCOUNTABILITY, RESPONSIBILITY, AND LIABILITY OF COUNTY GOVERNING
8 BODIES WITH REGARD TO PUBLIC FUNDS; DEFINING PUBLIC FUNDS; PROVIDING
9 CONTRACT AND AUDIT REQUIREMENTS; INCREASING AUTHORITY AND
10 RESPONSIBILITY OF THE DIVISION OF MENTAL HEALTH OVER FEDERAL AND
11 STATE FUNDS ALLOCATED FOR LOCAL MENTAL HEALTH PROGRAMS AND
12 SERVICES; AND PROVIDING AN EFFECTIVE DATE.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **17A-1-403**, as last amended by Chapter 30, Laws of Utah 1992

16 **17A-3-602**, as enacted by Chapter 181, Laws of Utah 1990

17 **62A-1-111**, as last amended by Chapter 240, Laws of Utah 1996

18 **62A-12-101**, as last amended by Chapter 227, Laws of Utah 1993

19 **62A-12-102**, as last amended by Chapter 181, Laws of Utah 1990

20 **62A-12-102.5**, as renumbered and amended by Chapter 181, Laws of Utah 1990

21 **62A-12-105**, as last amended by Chapter 30, Laws of Utah 1992

22 **62A-12-289**, as last amended by Chapter 10, Laws of Utah 1997

23 **76-8-401**, as last amended by Chapter 232, Laws of Utah 1995

24 **76-8-402**, as last amended by Chapter 232, Laws of Utah 1995

25 **76-8-404**, as last amended by Chapter 232, Laws of Utah 1995

26 ENACTS:

27 **17A-3-602.1**, Utah Code Annotated 1953

1 **17A-3-603.5**, Utah Code Annotated 1953

2 **62A-12-289.1**, Utah Code Annotated 1953

3 REPEALS:

4 **17A-3-612**, as renumbered and amended by Chapter 186, Laws of Utah 1990

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

6 Section 1. Section **17A-1-403** is amended to read:

7 **17A-1-403. Applicability to special districts -- Exceptions.**

8 This part applies to all special districts under Subsection 17A-1-404(19) except the
9 following districts which are specifically excluded from this part:

10 (1) redevelopment agencies created under Chapter 2, Part 11 or 12;

11 (2) public transit districts created under Chapter 2, Part 10;

12 (3) health departments created under Title 26A, Chapter 1; and

13 ~~[(4) mental health districts created under Chapter 3, Part 6; and]~~

14 ~~[(5)]~~ (4) entities created under Title 11, Chapter 13, Interlocal Cooperation Act.

15 Section 2. Section **17A-3-602** is amended to read:

16 **17A-3-602. Local mental health authorities -- Responsibilities.**

17 (1) All county governing bodies in this state are local mental health authorities. Within
18 legislative appropriations and county matching funds required by this section, and under the policy
19 ~~[direction of the board]~~ and ~~[the]~~ administrative direction of the ~~[division]~~ Division of Mental
20 Health within the Department of Human Services, local mental health authorities shall provide
21 mental health services to persons within their respective counties. Two or more county governing
22 bodies may join to provide mental health prevention and treatment services.

23 (2) The governing bodies may establish acceptable ways of apportioning the cost of mental
24 health services. Any agreement for joint mental health services may designate the treasurer of one
25 of the participating counties as the custodian of moneys available for those joint services, and that
26 the designated treasurer, or other disbursing officer, may make payments from those moneys for
27 such purposes upon audit of the appropriate auditing officer or officers representing the
28 participating counties. The agreement may provide for:

29 (a) joint operation of services and facilities or for operation of services and facilities under
30 contract by one participating local mental health authority for other participating local mental
31 health authorities; and

1 (b) allocation of appointments of members of the mental health advisory council between
2 or among participating counties.

3 (3) (a) All county governing bodies, as local mental health authorities, are accountable to
4 the Department of Human Services, the Department of Health, and the state with regard to the use
5 of state and federal funds for mental health services, regardless of whether those services are
6 provided by a private contract provider.

7 (b) A county governing body shall comply, and require compliance by its contract
8 provider, with all directives issued by the Department of Human Services and the Department of
9 Health regarding the use and expenditure of state and federal funds. The Department of Human
10 Services and Department of Health shall ensure that those directives are not duplicative or
11 conflicting, and shall consult and coordinate with local mental health authorities with regard to
12 programs and services.

13 [(3)] (4) Local mental health authorities shall:

14 (a) review and evaluate mental health needs and services;

15 (b) annually prepare and submit to the division a plan for mental health funding and
16 service delivery. The plan shall include[.] services for adults, youth, and children, including, but
17 [is] not limited to, the following:

18 (i) inpatient care and services;

19 (ii) residential care and services;

20 [(iii) day treatment and psychosocial rehabilitation;]

21 [(iv)] (iii) outpatient care and services;

22 [(v)] (iv) 24-hour crisis care and services;

23 [(vi) outreach care and services;]

24 [(vii) follow-up care and services;]

25 [(viii) screening for referral services;]

26 (v) psychotropic medication management;

27 (vi) psychosocial rehabilitation including, but not limited to, vocational training, social
28 and physical rehabilitation, and skills development;

29 (vii) case management;

30 (viii) community supports including, but not limited to, in-home services, housing, family
31 support services, and respite services; and

1 (ix) consultation and education services, including but not limited to, case consultation,
2 collaboration with other service agencies, public education, and public information; [and]

3 [~~x~~] case management;]

4 (c) establish and maintain, either directly or by contract, programs licensed under Title
5 62A, Chapter 2;

6 (d) appoint directly or by contract a full-time or part-time director for mental health
7 programs and prescribe his duties;

8 (e) provide input and comment on new and revised policies established by the [board]
9 State Board of Mental Health;

10 (f) establish [~~or~~] and require [~~contractors~~] contract providers to establish administrative,
11 clinical, personnel, financial, and management policies regarding mental health services and
12 facilities, in accordance with the policies of the [board] state Board of Mental Health and the
13 Division of Mental Health, and in accordance with state and federal law;

14 (g) establish mechanisms [~~to provide~~] allowing for direct citizen input; and

15 (h) annually contract with the Division of Mental Health to provide mental health
16 programs and services in accordance with the provisions of Title 62A, Chapter 12;

17 [~~h~~] (i) comply with all [~~applicable~~] state and federal statutes, policies, audit requirements,
18 contract requirements, and any directives resulting from those audits[;] and contract requirements;

19 [~~i~~] (j) provide funding equal to at least 20% of the state funds that it receives to fund
20 services described in the plan; and

21 [~~j~~] (k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
22 Cooperation Act, [~~and with the requirements and procedures of~~] Title 51, Chapter 2, and Title 17A,
23 Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act.

24 [~~4~~] (5) Before disbursing any public funds, local mental health authorities shall require
25 that all entities that receive any public funds agree in writing that:

26 (a) the division may examine the entity's financial records; [and]

27 (b) the county auditor may examine and audit the entity's financial records [~~if requested~~
28 to do so by the local mental health authority]; and

29 (c) the entity will comply with the provisions of Subsection (3)(b).

30 [~~5~~] (6) Local mental health authorities may receive property, grants, gifts, supplies,
31 materials, contributions, and any benefit derived therefrom, for mental health services. If those

1 gifts are conditioned upon their use for a specified service or program, they shall be so used.

2 (7) A local mental health authority may not allow its contract provider to expend federal,
3 state, or local funds in any manner other than that allowed for state and county employees.

4 (8) For purposes of this section "public funds" means the same as that term is defined in
5 Section 17A-3-603.5.

6 Section 3. Section **17A-3-602.1** is enacted to read:

7 **17A-3-602.1. Failure of local mental health authority to comply with state law --**
8 **Petition for receivership.**

9 (1) If a local mental health authority fails to comply with the provisions of Subsection
10 17A-3-602(4)(f), (i), (j), (k), or (5), the Division of Mental Health may petition the appropriate
11 district court for appointment of a receiver over all mental health programs and services of the
12 local mental health authority.

13 (2) The court shall issue an order to show cause why a receiver should not be appointed,
14 answerable within five days after the petition is filed.

15 (3) If the court determines that the facts warrant granting the petition, it shall appoint a
16 receiver to take charge of all mental health programs and services of the local mental health
17 authority. The Division of Mental Health may be appointed as receiver upon its request, if the
18 court determines that no other available person or entity would be equally qualified, or objective.

19 (4) A receiver appointed pursuant to this section shall have the powers and duties
20 prescribed by the court.

21 Section 4. Section **17A-3-603.5** is enacted to read:

22 **17A-3-603.5. Civil liability for negligent oversight of public funds.**

23 (1) As used in this section, "public funds" means federal or state monies received from the
24 United States Government or appropriated by the Legislature to the Department of Human
25 Services, the Department of Health, a county governing body, or local mental health authority for
26 the purposes of providing mental health programs or services. "Public funds" includes monies that
27 have been transferred by the state, a local governmental entity, or a local mental health authority
28 to a private provider under a contract to provide mental health programs or services. Those funds
29 maintain the nature of "public funds" while in the possession of the private entity that has
30 contracted with a local mental health authority to provide mental health programs or services.

31 (2) Each local mental health authority is responsible for oversight of all public funds

1 received by it, in order to assure that those public funds are utilized in accordance with federal and
2 state law, the rules and policies of the Department of Human Services and the Department of
3 Health, and the provisions of any contract between the local mental health authority and the
4 Department of Human Services, the Department of Health, or a private provider. A local mental
5 health authority is civilly liable, in accordance with the penalties described in Subsection (3), for
6 failure to take immediate corrective action, if it knew or reasonably should have known that a
7 contract provider of mental health programs or services or one of its employees:

8 (a) violated, on one or more occasions, any federal or state criminal law;

9 (b) knowingly violated, on more than one occasion, any rule or policy of the Department
10 of Human Services or Department of Health, or any provision of contract between the local mental
11 health authority and the Department of Human Services, the Department of Health, or the private
12 provider;

13 (c) appropriated public funds to his own use or to the use of another without authority of
14 law;

15 (d) loaned public funds without authority of law;

16 (e) failed to keep public funds in his possession until they were disbursed or paid out by
17 authority of law;

18 (f) unlawfully deposited public funds in any bank or with any other person;

19 (g) knowingly kept any false account or made any false entry or erasure in any account of
20 or relating to the public funds;

21 (h) fraudulently altered, falsified, concealed, destroyed, or obliterated any account of or
22 relating to public funds;

23 (i) willfully refused or omitted to pay over, on demand, any public funds in his hands upon
24 presentation of a draft, order, or warrant drawn upon such funds by competent authority;

25 (j) willfully omitted to transfer public funds when the transfer was required by law;

26 (k) willfully omitted or refused to pay over, to any officer or person authorized by law to
27 receive it, any public funds received by him, when under any duty imposed by law to pay over
28 those funds;

29 (l) failed to ensure competent oversight for lawful disbursement of public funds; or

30 (m) appropriated public funds for an unlawful use or for a use that was not in compliance
31 with contract provisions or state or local policy.

1 (3) A local mental health authority that knew or reasonably should have known of any of
2 the circumstances described in Subsection (2), and that fails or refuses to take immediate
3 corrective action in good faith shall, in addition to any other penalties provided by law, be subject
4 to the following penalties:

5 (a) in all cases, shall be required to make full and complete repayment to the state of all
6 public funds improperly used or expended; and

7 (b) in all cases, shall be required to pay the state its costs of enforcement of this section,
8 including, but not limited to, the costs of auditors, investigators, attorneys, and other public
9 employees, as determined by the Office of the Attorney General.

10 (4) (a) In addition to the penalties described in Subsection (3), the Office of the Attorney
11 General, on behalf of the Department of Human Services or the Department of Health, may
12 petition the district court for the county in which the local mental health authority or its contract
13 provider is located for the appointment of a receiver over all mental health programs and services
14 of the local mental health authority.

15 (b) The court shall issue an order to show cause why a receiver should not be appointed,
16 answerable within five days after the petition is filed.

17 (c) If the court determines that the facts warrant granting the petition, it shall appoint a
18 receiver to take charge of all mental health programs and services of the local mental health
19 authority. In the case of misuse of medicaid funds, the receiver shall be one who is approved by
20 the Department of Health; in all other cases, the receiver shall be approved by the Department of
21 Human Services. Either of those departments may be appointed as receiver, upon their request,
22 if the court determines that no other available person or entity would be equally qualified, or
23 objective. The court may determine fair compensation for the receiver.

24 (d) A receiver appointed pursuant to this section shall have the powers and duties
25 prescribed by the court.

26 Section 5. Section **62A-1-111** is amended to read:

27 **62A-1-111. Department authority.**

28 The department has authority, in addition to all other authority and responsibility granted
29 to it by law, to:

30 (1) adopt rules, not inconsistent with law, as the department may deem necessary or
31 desirable for providing social services to the people of this state;

- 1 (2) establish and manage client trust accounts in the department's institutions and
2 community programs, at the request of the client or his legal guardian or representative, or in
3 accordance with federal law;
- 4 (3) purchase, as authorized or required by law, services that the department is responsible
5 to provide for legally eligible persons;
- 6 (4) conduct adjudicative proceedings for clients and providers in accordance with the
7 procedures of Title 63, Chapter 46b, Administrative Procedures Act;
- 8 (5) establish eligibility standards for its programs, not inconsistent with state or federal law
9 or regulations;
- 10 (6) take necessary steps, including legal action, to recover money or the monetary value
11 of services provided to a recipient who was not eligible;
- 12 (7) set and collect fees for its services;
- 13 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or
14 limited by law;
- 15 (9) acquire, manage, and dispose of any real or personal property needed or owned by the
16 department, not inconsistent with state law;
- 17 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the
18 proceeds thereof, may be credited to the program designated by the donor, and may be used for
19 the purposes requested by the donor, as long as the request conforms to state and federal policy;
20 all donated funds shall be considered private, nonlapsing funds and may be invested under
21 guidelines established by the state treasurer;
- 22 (11) accept and employ volunteer labor or services; the department is authorized to
23 reimburse volunteers for necessary expenses, when the department considers that reimbursement
24 to be appropriate;
- 25 (12) carry out the responsibility assigned in the Workforce Services Plan by the State
26 Council on Workforce Services;
- 27 (13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination
28 of services for the homeless;
- 29 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to
30 coordination of services for handicapped students;
- 31 (15) provide training and educational opportunities for its staff;

1 (16) collect child support payments and any other monies due to the department;

2 [~~(17) examine and audit the expenditures of any public funds provided to local substance~~
3 ~~abuse authorities, local mental health authorities, local area agencies on aging, and any agency or~~
4 ~~organization that contracts with or receives funds from those authorities or agencies. Those local~~
5 ~~authorities, area agencies, and any person or entity that contracts with or receives funds from those~~
6 ~~authorities or area agencies, shall provide the department with any information it deems necessary~~
7 ~~to complete its audit;]~~

8 [~~(18)~~ (17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for
9 Support Act, to parents whose child lives out of the home in a department licensed or certified
10 setting; ~~and]~~

11 [~~(19)~~ (18) carry out the responsibilities assigned to it by statute~~[-]; and~~

12 (19) examine and audit the expenditures of any public funds provided to local substance
13 abuse authorities, local mental health authorities, local area agencies on aging, and any person,
14 agency, or organization that contracts with or receives funds from those authorities or agencies.
15 Those local authorities, area agencies, and any person or entity that contracts with or receives
16 funds from those authorities or area agencies, shall provide the department with any information
17 the department deems necessary. The department is further authorized to issue directives resulting
18 from any examination or audit to local authorities, area agencies, and persons or entities that
19 contract with or receive funds from those authorities with regard to any public funds. For purposes
20 of this Subsection (19) "public funds" means the same as that term is defined in Section
21 62A-12-101.

22 Section 6. Section **62A-12-101** is amended to read:

23 **62A-12-101. Definitions.**

24 As used in this chapter:

25 (1) "Board" means the Board of Mental Health established in accordance with Sections
26 62A-1-105 and 62A-1-107.

27 (2) "Director" means the director of the Division of Mental Health.

28 (3) "Division" means the Division of Mental Health.

29 (4) "Local mental health authority" means a county legislative body.

30 (5) "Public funds" means federal or state monies received from the United States
31 Government or appropriated by the Legislature to the Department of Human Services, the

1 Department of Health, a county governing body, or local mental health authority for the purposes
2 of providing mental health programs or services. "Public funds" includes monies that have been
3 transferred by the state, a local governmental entity, or a local mental health authority to a private
4 provider under a contract to provide mental health programs or services. Those funds maintain
5 the nature of "public funds" while in the possession of the private entity that has contracted with
6 a local mental health authority to provide mental health programs or services.

7 [(5)] (6) "Severe mental disorder" means schizophrenia, major depression, bipolar
8 disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the
9 board.

10 Section 7. Section **62A-12-102** is amended to read:

11 **62A-12-102. Division of Mental Health -- Creation -- Responsibilities.**

12 (1) There is created the Division of Mental Health within the department, under the
13 administration and general supervision of the executive director, and, with regard to its programs,
14 under the policy direction of the board. The division is the mental health authority for this state.

15 (2) The division shall:

16 (a) collect and disseminate information pertaining to mental health;

17 (b) develop, administer, and supervise a comprehensive state mental health program;

18 (c) provide direction over the state hospital including approval of its budget, administrative
19 policy, and coordination of services with local service plans;

20 (d) promote and establish cooperative relationships with courts, hospitals, clinics, medical
21 and social agencies, public health authorities, law enforcement agencies, education and research
22 organizations, and other related groups;

23 (e) receive [~~and~~], distribute [~~state and federal~~], and provide direction over public funds for
24 mental health services;

25 (f) consult and coordinate with local mental health authorities regarding mental health
26 programs and services;

27 [(f)] (g) monitor [~~and~~], evaluate, and approve or disapprove programs provided by local
28 mental health authorities[~~, and~~] with public funds;

29 (h) examine expenditures of any local, state, and federal funds;

30 (i) monitor, approve or disapprove, and oversee the expenditure of public funds by local
31 mental health authorities and their contract providers;

1 ~~[(g)]~~ (j) contract with local mental health authorities to provide or arrange for a
2 comprehensive continuum of services in accordance with board and division policy, contract
3 provisions, and the local plan;

4 ~~[(h)]~~ (k) contract with private and public entities for special statewide or nonclinical
5 services in accordance with board policy;

6 ~~[(i)]~~ (l) review and approve or disapprove each local mental health ~~[authority plans and~~
7 ~~in order]~~ authority's plan, to assure a statewide comprehensive continuum of mental health
8 services, and to assure appropriate expenditure of public funds;

9 ~~(m)~~ review and approve or disapprove each local mental health authority's contract with
10 its provider of mental health programs and services;

11 ~~[(j)]~~ (n) promote or conduct research on mental health issues and submit any
12 recommendations for changes in policy and legislation to the Legislature and the governor;

13 ~~[(k)]~~ (o) withhold funds from local mental health authorities and public and private
14 providers for contract noncompliance, failure to comply with division directives regarding the use
15 of public funds, or for misuse of public funds or monies;

16 ~~[(l)]~~ (p) cooperate with other state, county, nonprofit, and other private entities to prevent
17 duplication of services;

18 ~~[(m)]~~ (q) monitor and assure compliance with board and division policy and contract
19 requirements; and

20 ~~[(n)]~~ (r) perform such other acts as are necessary to promote mental health in the state.

21 ~~(3)~~ The division may refuse to contract with any local mental health authority that fails,
22 or has failed, to expend public funds in accordance with state law, policy, contract provisions, or
23 directives issued in accordance with state law.

24 ~~(4)~~ Before reissuing or renewing a contract with any local mental health authority, the
25 division shall question and review whether the local mental health authority is complying with its
26 oversight and management responsibilities described in Sections 17A-3-602 and 17A-3-603.5.
27 Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described
28 in Sections 17A-3-602.1 and 17A-3-603.5.

29 ~~[(3)]~~ (5) (a) The division may accept, in the name of and on behalf of the state, donations,
30 gifts, devises, or bequests of real or personal property or services to be used as specified by the
31 donor.

1 (b) Those donations, gifts, devises, or bequests shall be used by the division in the
2 performance of its powers and duties. Any money so obtained shall be considered private
3 nonlapsing funds and shall be deposited into an interest-bearing expendable trust fund to be used
4 by the division for mental health services. The state treasurer may invest the fund and all interest
5 shall remain with the fund.

6 (6) The division shall annually review with each local mental health authority the
7 authority's statutory and contract responsibilities regarding:

8 (a) the use of public funds;

9 (b) oversight responsibilities regarding public funds; and

10 (c) governance of mental health programs and services.

11 Section 8. Section **62A-12-102.5** is amended to read:

12 **62A-12-102.5. Fees for mental health services.**

13 (1) The division may, with the approval of the Legislature, the executive director, and the
14 board establish fee schedules and assess fees for services rendered by the division.

15 (2) Fees shall be charged for mental health services, but services may not be refused to any
16 person because of his [~~ability or~~] inability to pay. Any person who is unable to obtain private care
17 for financial, geographical, or other sufficient reason may be accepted for community mental
18 health services.

19 Section 9. Section **62A-12-105** is amended to read:

20 **62A-12-105. Allocation of funds to local mental health authorities -- Formula.**

21 (1) The board shall establish₂ by rule₂ a formula for allocating funds to local mental health
22 authorities through contracts, to provide mental health services in accordance with [~~Section~~
23 ~~17A-3-606~~] the provisions of Title 17A, Chapter 3, Part 6 and Title 62A, Chapter 12. That
24 formula shall provide for allocation of funds based on need. Determination of need shall be based
25 on population, unless the board establishes, by valid and accepted data, that other defined factors
26 are relevant and reliable indicators of need. The formula shall include a differential to compensate
27 for additional costs of providing services in rural areas.

28 (2) The formula established under Subsection (1) [~~shall be in effect on or before July 1,~~
29 ~~1990, and~~] applies to all state and federal funds appropriated by the Legislature to the division for
30 local mental health authorities, but does not apply to:

31 (a) funds that local mental health authorities receive from sources other than the division;

1 (b) funds that local mental health authorities receive from the division to operate a specific
2 program within its jurisdiction that is available to all residents of the state;

3 (c) funds that local mental health authorities receive from the division to meet a need that
4 exists only within the jurisdiction of that local mental health authority; and

5 (d) funds that local mental health authorities receive from the division for research
6 projects.

7 (3) Contracts with local mental health authorities shall provide that the division may
8 withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys'
9 fees, and other expenses associated with reviewing the expenditure of public funds by a local
10 mental health authority or its contract provider, if there has been an audit finding or judicial
11 determination that public funds have been misused by the local mental health authority or its
12 contract provider.

13 Section 10. Section **62A-12-289** is amended to read:

14 **62A-12-289. Responsibilities of the Division of Mental Health.**

15 (1) It is the responsibility of the division to assure that the requirements of this part are met
16 and applied uniformly by local mental health authorities across the state.

17 (2) Since it is the division's responsibility, under Section 62A-12-102, to contract with,
18 review, [and] approve, and oversee local mental health authority plans, and to withhold funds from
19 local mental health authorities and public and private providers for contract noncompliance or
20 misuse of public funds, the division shall:

21 (a) require each local mental health authority to submit its plan to the division by May 1
22 of each year;

23 [~~(b)~~ forward a copy of each local mental health authority's written plan to the Office of
24 Legislative Research and General Counsel, for review by the Human Services Interim Committee;
25 ~~within ten days after receiving the plan;~~]

26 [~~(c)~~ (b) conduct an annual program audit and review of each local mental health authority
27 in the state, and its contract provider; and

28 [~~(d)~~ (c) provide a written report to the Human Services Interim Committee on July 1,
29 1996, and each year thereafter, and provide an oral report to that committee, as [scheduled]
30 requested. That report shall provide information regarding the annual [program] audit and review,
31 the financial [status] expenditures of each local mental health authority and its contract provider,

1 the status of each local authority's and its contract provider's compliance with its plan, state
2 statutes, and with the provisions of the contract awarded.

3 (3) The annual audit and review described in Subsection (2)(b) shall, in addition to items
4 determined by the division to be necessary and appropriate, include a review and determination
5 regarding whether public funds allocated to local mental health authorities match services rendered
6 by it or its contract provider, and whether each local mental health authority is exercising sufficient
7 oversight and control over public funds allocated for mental health programs and services.

8 (4) The Legislature may refuse to appropriate funds to the division upon the division's
9 failure to comply with the provisions of this part.

10 Section 11. Section **62A-12-289.1** is enacted to read:

11 **62A-12-289.1. Contracts with local mental health authorities -- Provisions.**

12 When the division contracts with a local mental health authority to provide mental health
13 programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3,
14 Part 6, it shall ensure that those contracts include at least the following provisions:

15 (1) the division shall approve an independent auditor from a list of certified auditors for
16 any audit of the local mental health authority and its contract provider's programs or services;

17 (2) the local mental health authority or its contract provider shall invite and include all
18 funding partners in its auditor's pre- and exit conferences;

19 (3) each member of the local mental health authority shall annually certify that all federal
20 and state required fiscal controls have been complied with;

21 (4) requested information and outcome data will be provided to the division in the manner
22 and within the time lines defined by the division;

23 (5) any audit reports by state or county persons or entities concerning the local mental
24 health authority or its contract provider shall be provided to the executive director of the
25 department, the local mental health authority, and members of the contract provider's governing
26 board; and

27 (6) the local mental health authority or its contract provider will offer and provide mental
28 health services to residents who are indigent and who meet state criteria for serious and persistent
29 mental illness or severe emotional disturbance.

30 Section 12. Section **76-8-401** is amended to read:

31 **76-8-401. "Public monies" and "public officer" defined.**

1 As used in this title:

2 (1) "Public monies" [means] and "public funds" [as defined in Section 51-7-3] mean
3 monies, funds, and accounts, regardless of the source from which they are derived, that are owned,
4 held, or administered by the state or any of its boards, commissions, institutions, departments,
5 divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city,
6 school district, political subdivision, or other public body. "Public monies" also includes monies,
7 funds, or accounts that have been transferred by any of those public entities to a private contract
8 provider of programs or services. Those monies, funds, or accounts maintain the nature of public
9 monies while in the possession of the private entity that has contracted with a public entity to
10 provide programs or services.

11 (2) "Public officer" means:

12 (a) all elected officials of the state, a political subdivision of the state, a county, town, city,
13 precinct, or district;

14 (b) a person appointed to or serving an unexpired term of an elected office;

15 (c) a judge of a court of record and not of record including justice court judges; [and]

16 (d) a member of the Board of Pardons and Parole[-]; and

17 (e) a person appointed by the governor and confirmed by the Senate to serve in an official
18 capacity, in a full-time, paid position.

19 Section 13. Section **76-8-402** is amended to read:

20 **76-8-402. Misusing public monies.**

21 (1) Every public officer of this state or a political subdivision, or of any county, city, town,
22 precinct, or district of this state, and every other person charged, either by law or under contract,
23 with the receipt, safekeeping, transfer [or], disbursement, or use of public monies commits an
24 offense if the officer or other charged person:

25 (a) appropriates the money or any portion of it to his own use or to the use of another
26 without authority of law;

27 (b) loans the money or any portion of it without authority of law;

28 (c) fails to keep the money in his possession until disbursed or paid out by authority of
29 law;

30 (d) unlawfully deposits the money or any portion in any bank or with any other person;

31 (e) knowingly keeps any false account or makes any false entry or erasure in any account

1 of or relating to the money;

2 (f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

3 (g) willfully refuses or omits to pay over, on demand, any public monies in his hands,
4 upon the presentation of a draft, order, or warrant drawn upon such monies by competent
5 authority;

6 (h) willfully omits to transfer the money when the transfer is required by law; [or]

7 (i) willfully omits or refuses to pay over, to any officer or person authorized by law to
8 receive it, any money received by him under any duty imposed by law so to pay over the same[-];

9 (j) fails to insure competent oversight for lawful disbursement of public monies; or

10 (k) appropriates public monies for an unlawful use or for a use that is not in compliance
11 with contract provisions or state or local policy.

12 (2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the
13 second degree if:

14 (a) the value of the money exceeds \$5,000;

15 (b) the amount of the false account exceeds \$5,000;

16 (c) the amount falsely entered exceeds \$5,000;

17 (d) the amount that is the difference between the original amount and the fraudulently
18 altered amount exceeds \$5,000; or

19 (e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified
20 in the account exceeds \$5,000.

21 (3) In addition to the penalty described in Subsection (2), a public officer who violates
22 Subsection (1) shall be disqualified from public office.

23 Section 14. Section **76-8-404** is amended to read:

24 **76-8-404. Making profit from or misusing public monies -- Knowledge of another's**
25 **profit or misuse -- Disqualification from office -- Criminal penalty.**

26 (1) A public officer, regardless of whether or not the officer receives, safekeeps, transfers,
27 disburses, or has a fiduciary relationship with public monies, who [shall make] makes a profit from
28 or out of public monies, or [shall use the same] who uses public monies in a manner or for a
29 purpose not authorized by law, is guilty of a third degree felony [as provided in Section 76-8-402]
30 and shall, in addition to the punishment provided by law, be disqualified to hold public office.

31 (2) (a) A public officer, regardless of whether or not the officer receives, safekeeps,

1 transfers, disburses, or has a fiduciary relationship with public monies, who allows any other
2 person to make a profit from or out of public monies or to use public monies in a manner or for
3 a purpose not authorized by law, is guilty of a class A misdemeanor if the public officer:

4 (i) either individually or as a member of a governing body, directed, or contracted with,
5 that person, to provide programs or services in return for payment of public monies; and

6 (ii) was statutorily charged with direct oversight of that person or contract and knew or
7 reasonably should have known of the acts or omissions that led to unlawful profit from or
8 unauthorized use of public monies.

9 (b) A public officer who violates Subsection (2)(a) shall, in addition to the penalty
10 provided, be disqualified to hold public office.

11 (3) Any person who receives public monies, either directly or by contract with a public
12 officer, governing authority, or public entity, to be used for a specified public purpose, and who
13 uses those public monies in a manner or for a purpose not authorized by law, is guilty of a class
14 A misdemeanor.

15 **Section 15. Repealer.**

16 This act repeals:

17 **Section 17A-3-612, Continuation of existing services or facilities.**

18 **Section 16. Effective date.**

19 This act takes effect on July 1, 1998.

Legislative Review Note

as of 2-5-98 11:25 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel