

**Representative Nora B. Stephens** proposes to substitute the following bill:

**MENTAL HEALTH AUTHORITY AND**

**ADMINISTRATION REFORM**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Nora B. Stephens**

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

1 ENACTS:

2 **17A-3-603.5**, Utah Code Annotated 1953

3 **62A-12-289.1**, Utah Code Annotated 1953

4 REPEALS:

5 **17A-3-612**, as renumbered and amended by Chapter 186, Laws of Utah 1990

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

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

8 **17A-1-403. Applicability to special districts -- Exceptions.**

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

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

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

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

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

15 [~~(5)~~] (4) entities created under Title 11, Chapter 13, Interlocal Cooperation Act.

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

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

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

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

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

1 health authorities; and

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

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

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

14 [~~3~~] (4) Local mental health authorities shall:

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

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

19 (i) inpatient care and services;

20 (ii) residential care and services;

21 [~~(iii) day treatment and psychosocial rehabilitation;~~]

22 [~~(iv)~~] (iii) outpatient care and services;

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

24 [~~(vi) outreach care and services;~~]

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

26 [~~(viii) screening for referral services;~~]

27 (v) psychotropic medication management;

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

30 (vii) case management;

31 (viii) community supports including, but not limited to, in-home services, housing, family

1 support services, and respite services; and

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

4 [~~x~~] case management;]

5 (c) establish and maintain, either directly or by contract, programs licensed under Title  
6 62A, Chapter 2;

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

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

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

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

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

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

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

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

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

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

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

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

31 [~~5~~] (6) Local mental health authorities may receive property, grants, gifts, supplies,

1 materials, contributions, and any benefit derived therefrom, for mental health services. If those  
2 gifts are conditioned upon their use for a specified service or program, they shall be so used.

3 (7) A local mental health authority shall assure that its contract provider expends federal,  
4 state, and local funds in the manner allowed for state and county employees.

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

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

8 **17A-3-603.5. Responsibility for oversight of public funds.**

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

17 (2) Each local mental health authority is responsible for oversight of all public funds  
18 received by it, in order to assure that those public funds are utilized in accordance with federal and  
19 state law, the rules and policies of the Department of Human Services and the Department of  
20 Health, and the provisions of any contract between the local mental health authority and the  
21 Department of Human Services, the Department of Health, or a private provider. That oversight  
22 includes ensuring that neither the contract provider nor any of its employees:

23 (a) violate any federal or state criminal law;

24 (b) knowingly violate, on more than one occasion, any rule or policy of the Department  
25 of Human Services or Department of Health, or any provision of contract between the local mental  
26 health authority and the Department of Human Services, the Department of Health, or the private  
27 provider;

28 (c) appropriate public funds to their own use or to the use of another person or entity  
29 without authority of law;

30 (d) loan public funds without authority of law;

31 (e) fail to keep public funds in their possession until those funds are disbursed or paid out

1 by authority of law;

2 (f) unlawfully deposit public funds in any bank or with any other person;

3 (g) knowingly keep any false account or make any false entry or erasure in any account  
4 of or relating to the public funds;

5 (h) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to  
6 public funds;

7 (i) willfully refuse or omit to pay over, on demand, any public funds upon presentation of  
8 a draft, order, or warrant drawn upon such funds by competent authority;

9 (j) willfully omit to transfer public funds when the transfer is required by law;

10 (k) willfully omit or refuse to pay over, to any officer or person authorized by law to  
11 receive it, any public funds received, when under any duty imposed by law to pay over those  
12 funds;

13 (l) fail to ensure competent oversight for lawful disbursement of public funds; or

14 (m) appropriate public funds for an unlawful use or for a use that is not in compliance with  
15 contract provisions or with state or local policy.

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

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

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

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

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

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

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

10           Section 4. Section **62A-1-111** is amended to read:

11           **62A-1-111. Department authority.**

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

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

16           (2) establish and manage client trust accounts in the department's institutions and  
17 community programs, at the request of the client or his legal guardian or representative, or in  
18 accordance with federal law;

19           (3) purchase, as authorized or required by law, services that the department is responsible  
20 to provide for legally eligible persons;

21           (4) conduct adjudicative proceedings for clients and providers in accordance with the  
22 procedures of Title 63, Chapter 46b, Administrative Procedures Act;

23           (5) establish eligibility standards for its programs, not inconsistent with state or federal law  
24 or regulations;

25           (6) take necessary steps, including legal action, to recover money or the monetary value  
26 of services provided to a recipient who was not eligible;

27           (7) set and collect fees for its services;

28           (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or  
29 limited by law;

30           (9) acquire, manage, and dispose of any real or personal property needed or owned by the  
31 department, not inconsistent with state law;

1 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the  
2 proceeds thereof, may be credited to the program designated by the donor, and may be used for  
3 the purposes requested by the donor, as long as the request conforms to state and federal policy;  
4 all donated funds shall be considered private, nonlapsing funds and may be invested under  
5 guidelines established by the state treasurer;

6 (11) accept and employ volunteer labor or services; the department is authorized to  
7 reimburse volunteers for necessary expenses, when the department considers that reimbursement  
8 to be appropriate;

9 (12) carry out the responsibility assigned in the Workforce Services Plan by the State  
10 Council on Workforce Services;

11 (13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination  
12 of services for the homeless;

13 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to  
14 coordination of services for handicapped students;

15 (15) provide training and educational opportunities for its staff;

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

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

23 ~~[(18)]~~ (17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for  
24 Support Act, to parents whose child lives out of the home in a department licensed or certified  
25 setting; [and]

26 ~~[(19)]~~ (18) carry out the responsibilities assigned to it by statute[-]; and

27 (19) examine and audit the expenditures of any public funds provided to local substance  
28 abuse authorities, local mental health authorities, local area agencies on aging, and any person,  
29 agency, or organization that contracts with or receives funds from those authorities or agencies.  
30 Those local authorities, area agencies, and any person or entity that contracts with or receives  
31 funds from those authorities or area agencies, shall provide the department with any information

1 the department deems necessary. The department is further authorized to issue directives resulting  
2 from any examination or audit to local authorities, area agencies, and persons or entities that  
3 contract with or receive funds from those authorities with regard to any public funds. If the  
4 department determines that it is necessary to withhold funds from a local mental health authority  
5 based on failure to comply with state or federal law, policy, or contract provisions, it may take  
6 steps necessary to ensure continuity of services. Those steps may include petitioning for  
7 receivership in accordance with the procedures described in Subsection 17A-3-603.5(4). For  
8 purposes of this Subsection (19) "public funds" means the same as that term is defined in Section  
9 62A-12-101.

10 Section 5. Section **62A-12-101** is amended to read:

11 **62A-12-101. Definitions.**

12 As used in this chapter:

13 (1) "Board" means the Board of Mental Health established in accordance with Sections  
14 62A-1-105 and 62A-1-107.

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

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

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

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

26 [(5)] (6) "Severe mental disorder" means schizophrenia, major depression, bipolar  
27 disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the  
28 board.

29 Section 6. Section **62A-12-102** is amended to read:

30 **62A-12-102. Division of Mental Health -- Creation -- Responsibilities.**

31 (1) There is created the Division of Mental Health within the department, under the

1 administration and general supervision of the executive director, and, with regard to its programs,  
2 under the policy direction of the board. The division is the mental health authority for this state.

3 (2) The division shall:

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

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

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

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

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

13 (f) consult and coordinate with local mental health authorities regarding mental health  
14 programs and services;

15 ~~[(f)]~~ (g) monitor and evaluate programs provided by local mental health authorities~~[-and]~~  
16 with public funds;

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

18 (i) monitor and oversee the expenditure of public funds by local mental health authorities  
19 and their contract providers;

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

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

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

28 (m) review and approve each local mental health authority's contract with its provider of  
29 mental health programs and services to assure compliance with state and federal law and policy;

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

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

4           ~~[(f)]~~ (p) cooperate with other state, county, nonprofit, and other private entities to prevent  
5 duplication of services;

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

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

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

12           (4) Before reissuing or renewing a contract with any local mental health authority, the  
13 division shall question and review whether the local mental health authority is complying with its  
14 oversight and management responsibilities described in Sections 17A-3-602 and 17A-3-603.5.  
15 Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described  
16 in Section 17A-3-603.5.

17           ~~[(3)]~~ (5) (a) The division may accept, in the name of and on behalf of the state, donations,  
18 gifts, devises, or bequests of real or personal property or services to be used as specified by the  
19 donor.

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

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

27           (a) the use of public funds;

28           (b) oversight responsibilities regarding public funds; and

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

30           Section 7. Section **62A-12-102.5** is amended to read:

31           **62A-12-102.5. Fees for mental health services.**

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

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

7 Section 8. Section **62A-12-105** is amended to read:

8 **62A-12-105. Allocation of funds to local mental health authorities -- Formula.**

9 (1) The board shall establish, by rule, a formula for allocating funds to local mental health  
10 authorities through contracts, to provide mental health services in accordance with [Section  
11 ~~17A-3-606~~] the provisions of Title 17A, Chapter 3, Part 6 and Title 62A, Chapter 12. That  
12 formula shall provide for allocation of funds based on need. Determination of need shall be based  
13 on population, unless the board establishes, by valid and accepted data, that other defined factors  
14 are relevant and reliable indicators of need. The formula shall include a differential to compensate  
15 for additional costs of providing services in rural areas.

16 (2) The formula established under Subsection (1) [~~shall be in effect on or before July 1,~~  
17 ~~1990, and~~] applies to all state and federal funds appropriated by the Legislature to the division for  
18 local mental health authorities, but does not apply to:

- 19 (a) funds that local mental health authorities receive from sources other than the division;
- 20 (b) funds that local mental health authorities receive from the division to operate a specific  
21 program within its jurisdiction that is available to all residents of the state;
- 22 (c) funds that local mental health authorities receive from the division to meet a need that  
23 exists only within the jurisdiction of that local mental health authority; and
- 24 (d) funds that local mental health authorities receive from the division for research  
25 projects.

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

1 Section 9. Section **62A-12-289** is amended to read:

2 **62A-12-289. Responsibilities of the Division of Mental Health.**

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

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

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

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

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

16 ~~[(d)]~~ (c) provide a written report to the Human Services Interim Committee on July 1,  
17 1996, and each year thereafter, and provide an oral report to that committee, as ~~[scheduled]~~  
18 requested. That report shall provide information regarding the annual ~~[program] audit and review,~~  
19 the financial ~~[status] expenditures~~ of each local mental health authority and its contract provider,  
20 the status of each local authority's and its contract provider's compliance with its plan, state  
21 statutes, and with the provisions of the contract awarded.

22 (3) The annual audit and review described in Subsection (2)(b) shall, in addition to items  
23 determined by the division to be necessary and appropriate, include a review and determination  
24 regarding whether public funds allocated to local mental health authorities are consistent with  
25 services rendered and outcomes reported by it or its contract provider, and whether each local  
26 mental health authority is exercising sufficient oversight and control over public funds allocated  
27 for mental health programs and services.

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

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

31 **62A-12-289.1. Contracts with local mental health authorities -- Provisions.**

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

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

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

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

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

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

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

19       Section 11. Section **76-8-401** is amended to read:

20       **76-8-401. "Public monies" and "public officer" defined.**

21       As used in this title:

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

31       (2) "Public officer" means:

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

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

4 (c) a judge of a court of record and not of record including justice court judges; and

5 (d) a member of the Board of Pardons and Parole.

6 Section 12. Section **76-8-402** is amended to read:

7 **76-8-402. Misusing public monies.**

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

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

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

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

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

18 (e) knowingly keeps any false account or makes any false entry or erasure in any account  
19 of or relating to the money;

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

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

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

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

27 (j) knowingly or intentionally fails to perform statutorily charged oversight for lawful  
28 disbursement of public monies; or

29 (k) knowingly or intentionally uses public monies unlawfully or in violation of a  
30 governmental contract provision, or in violation of state or local policy.

31 (2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the

1 second degree if:

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

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

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

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

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

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

11 Section 13. Section **76-8-404** is amended to read:

12 **76-8-404. Making profit from or misusing public monies -- Knowledge of another's**  
13 **profit or misuse -- Disqualification from office -- Criminal penalty.**

14 A public officer, regardless of whether or not the officer receives, safekeeps, transfers,  
15 disburses, or has a fiduciary relationship with public monies, who ~~[shall make]~~ makes a profit from  
16 or out of public monies, or ~~[shall use the same]~~ who uses public monies in a manner or for a  
17 purpose not authorized by law, is guilty of a felony as provided in Section 76-8-402 and shall, in  
18 addition to the punishment provided by law, be disqualified to hold public office.

19 Section 14. **Repealer.**

20 This act repeals:

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

22 Section 15. **Effective date.**

23 This act takes effect on July 1, 1998.