

LOCAL HUMAN SERVICES AUTHORITIES

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott K. Jenkins

This act modifies provisions relating to local substance abuse authorities and local mental health authorities. The act renumbers those provisions and makes technical changes.

The act contains a coordination clause.

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

AMENDS:

62A-2-101, as last amended by Chapter 300, Laws of Utah 2002

62A-15-103, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-105, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-111, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-202, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-602, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63A-9-701, as last amended by Chapter 254, Laws of Utah 1998

ENACTS:

17-43-101, Utah Code Annotated 1953

17-43-102, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

17-43-201, (Renumbered from 17A-3-701, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session)

17-43-202, (Renumbered from 17A-3-702, as last amended by Chapter 181 and

renumbered and amended by Chapter 186, Laws of Utah 1990)

17-43-203, (Renumbered from 17A-3-703, as enacted by Chapter 106, Laws of Utah 1999)

17-43-301, (Renumbered from 17A-3-602, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session)

17-43-302, (Renumbered from 17A-3-603, as enacted by Chapter 181, Laws of Utah 1990)

17-43-303, (Renumbered from 17A-3-603.5, as enacted by Chapter 106, Laws of Utah 1999)

17-43-304, (Renumbered from 17A-3-606, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session)

17-43-305, (Renumbered from 17A-3-607, as last amended by Chapter 181 and renumbered and amended by Chapter 186, Laws of Utah 1990)

17-43-306, (Renumbered from 17A-3-610, as last amended by Chapter 181 and renumbered and amended by Chapter 186, Laws of Utah 1990)

17-43-307, (Renumbered from 17A-3-611, as renumbered and amended by Chapter 186, Laws of Utah 1990)

17-43-308, (Renumbered from 17A-3-601, as renumbered and amended by Chapter 186, Laws of Utah 1990)

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

Section 1. Section **17-43-101** is enacted to read:

CHAPTER 43. LOCAL HUMAN SERVICES ACT

Part 1. General Provisions

17-43-101. Title.

This chapter is known as the "Local Human Services Act."

Section 2. Section **17-43-102** is enacted to read:

17-43-102. Definitions.

As used in this chapter:

(1) "Board" means the Board of Substance Abuse and Mental Health created within the Department of Human Services in Section 62A-1-105.

(2) "Department" means the Department of Human Services created in Section 62A-1-102.

(3) "Division" means the Division of Substance Abuse and Mental Health created within the Department of Human Services in Section 62A-1-105.

Section 3. Section **17-43-201**, which is renumbered from Section 17A-3-701 is renumbered and amended to read:

Part 2. Local Substance Abuse Authorities

~~[17A-3-701].~~ **17-43-201. Local substance abuse authorities --**

Responsibilities.

(1) ~~[A]~~ Each county legislative ~~[bodies in this state are]~~ body is a local substance abuse ~~[authorities]~~ authority. Within legislative appropriations and county matching funds required by this section, and under the policy direction of the ~~[state Board of Substance Abuse and Mental Health]~~ board and the administrative direction of the ~~[Division of Substance Abuse and Mental Health within the Department of Human Services,]~~ division, each local substance abuse ~~[authorities]~~ authority shall provide substance abuse services to residents of ~~[their respective counties]~~ the county. Two or more counties may join to provide substance abuse prevention and treatment services.

(2) ~~[The]~~ A county legislative ~~[bodies]~~ body may establish acceptable ways of apportioning the cost of substance abuse services. Any agreement for joint substance abuse services may designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services, and that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating counties. The agreement may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) ~~[AH]~~ Each county legislative ~~[bodies]~~ body, as a local substance abuse ~~[authorities, are]~~ authority, is accountable to the ~~[Department of Human Services]~~ department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

(b) ~~[A]~~ Each local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the ~~[Department of Human Services]~~ department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance abuse programs and services. The ~~[Department of Human Services]~~ department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

(4) ~~[Local]~~ Each local substance abuse ~~[authorities]~~ authority shall:

(a) review and evaluate substance abuse prevention and treatment needs and services;

(b) annually prepare and submit ~~[a plan]~~ to the division for funding and service delivery~~;~~ that includes primary prevention, targeted prevention, early intervention, and treatment services;

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint directly or by contract a full or part time director for substance abuse programs, and prescribe ~~[his]~~ the director's duties;

(e) provide input and comment on new and revised policies established by the ~~[state Board of Substance Abuse and Mental Health]~~ board;

(f) establish and require contract providers to establish administrative, clinical, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the ~~[state Board of Substance Abuse and Mental Health]~~ board, and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the [~~Division of Substance Abuse and Mental Health~~] division to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(j) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;

(l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities;

(m) for persons convicted of driving under the influence in violation of Subsection 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:

- (i) a screening and assessment;
- (ii) an educational series; and
- (iii) substance abuse treatment; and

(n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to supplement the cost of providing the services described in Subsection (4)(m).

(5) Before disbursing any public funds, each local substance abuse [~~authorities~~] authority shall require that all entities that receive any public funds from [~~a~~] the local substance abuse authority agree in writing that:

- (a) the division may examine the entity's financial records;
- (b) the county auditor may examine and audit the entity's financial records; and
- (c) the entity will comply with the provisions of Subsection (3)(b).

(6) [~~Local~~] A local substance abuse [~~authorities~~] authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for substance abuse

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

(7) (a) ~~[For purposes of]~~ As used in this section "public funds" means the same as that term is defined in Section ~~[17A-3-703]~~ 17-43-203.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 4. Section **17-43-202**, which is renumbered from Section 17A-3-702 is renumbered and amended to read:

~~[17A-3-702]~~. **17-43-202. Local substance abuse authorities -- Requirements prior to distributing public funds.**

(1) ~~[The]~~ Each local substance abuse authority shall award all public funds~~[, by complying]~~ in compliance with:

(a) the requirements of Title 63, Chapter 56, Utah Procurement Code~~]; or [by complying with]~~

(b) a county procurement ordinance that requires similar procurement practices.

(2) If all initial bids on the project are rejected, the authority shall publish a new invitation to bid. If no satisfactory bid is received by the authority when the bids received from the second invitation are opened, the authority may execute a contract without requiring competitive bidding.

~~[(3) (a) For purposes of this subsection, "governmental entity" means any political subdivision or institution of higher education of the state.]~~

~~[(b) The]~~ (3) A local substance abuse authority need not comply with the procurement provisions of this section when it disburses public funds to ~~[other governmental entities]~~ another political subdivision of the state or an institution of higher education of the state.

(4) ~~[Contracts]~~ Each contract awarded by a local substance abuse authority shall be for a fixed amount and limited period. ~~[Contracts]~~ A contract may be modified due to changes in available funding for the same contract purpose without competition.

Section 5. Section **17-43-203**, which is renumbered from Section 17A-3-703 is renumbered and amended to read:

~~[17A-3-703].~~ **17-43-203. Definition of "public funds" -- Responsibility for oversight of public funds -- Substance abuse programs and services.**

(1) As used in this section, "public funds":

(a) means:

(i) federal ~~[monies]~~ money received from the ~~[Department of Human Services]~~ department or the Department of Health~~[-];~~ and

(ii) state ~~[monies]~~ money appropriated by the Legislature to the ~~[Department of Human Services]~~ department, the Department of Health, a county governing body, or a local substance abuse authority for the purposes of providing substance abuse programs or services~~[- "Public funds"]; and~~

(b) includes ~~[those]~~ that federal and state ~~[monies that have]~~ money:

(i) even after the money has been transferred by a local substance abuse authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for the local substance abuse authority~~[- Those monies maintain the nature of "public funds"]; and~~

(ii) while in the possession of the private ~~[entity that has an annual or otherwise ongoing contract with a local substance abuse authority to provide comprehensive substance abuse programs or services for the local substance abuse authority]~~ provider.

(2) Each local substance abuse authority is responsible for oversight of all public funds received by it, to determine that those public funds are utilized in accordance with federal and state law, the rules and policies of the ~~[Department of Human Services]~~ department and the Department of Health, and the provisions of any contract between the local substance abuse authority and the ~~[Department of Human Services]~~ department, the Department of Health, or a private provider. That oversight includes requiring that neither the contract provider, as described in Subsection (1), nor any of its employees:

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

(b) knowingly violate, on more than one occasion, any applicable rule or policy of the [~~Department of Human Services~~] department or Department of Health, or any provision of contract between the local substance abuse authority and the [~~Department of Human Services~~] department, the Department of Health, or the private provider;

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

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

(e) fail to ensure competent oversight for lawful disbursement of public funds;

(f) appropriate public funds for an unlawful use or for a use that is not in compliance with contract provisions; or

(g) knowingly or intentionally use public funds unlawfully or in violation of a governmental contract provision, or in violation of state policy.

(3) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(4) [~~A~~] Each local substance abuse authority that [~~knew~~] knows or reasonably should [~~have known~~] know of any of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective action in good faith shall, in addition to any other penalties provided by law, be required to make full and complete repayment to the state of all public funds improperly used or expended.

(5) Any public funds required to be repaid to the state by a local substance abuse authority [~~pursuant to~~] under Subsection (4), based upon the actions or failure of the contract provider, may be recovered by the local substance abuse authority from its contract provider, in addition to the local substance abuse authority's costs and attorney's fees.

Section 6. Section **17-43-301**, which is renumbered from Section 17A-3-602 is renumbered and amended to read:

Part 3. Local Mental Health Authorities

~~[17A-3-602].~~ **17-43-301. Local mental health authorities -- Responsibilities.**

(1) ~~[AH]~~ Each county legislative ~~[bodies in this state are]~~ body is a local mental health ~~[authorities]~~ authority. Within legislative appropriations and county matching funds required by this section, under the policy direction of the ~~[state Board of Substance Abuse and Mental Health]~~ board and the administrative direction of the ~~[Division of Substance Abuse and Mental Health within the Department of Human Services;]~~ division, each local mental health ~~[authorities]~~ authority shall provide mental health services to persons within ~~[their respective counties]~~ the county.

(2) (a) Two or more counties may join to provide mental health prevention and treatment services.

~~[(2)]~~ (b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of mental health services. ~~[Any]~~

(c) An agreement for joint mental health services may:

(i) designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services~~[-and];~~

(ii) provide that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating counties~~[-The agreement may];~~ and

(iii) provide for:

~~[(a)]~~ (A) joint operation of services and facilities or for operation of services and facilities under contract by one participating local mental health authority for other participating local mental health authorities; and

~~[(b)]~~ (B) allocation of appointments of members of the mental health advisory council between or among participating counties.

(3) (a) ~~[AH]~~ Each county legislative ~~[bodies]~~ body, as a local mental health ~~[authorities; are]~~ authority, is accountable to the ~~[Department of Human Services]~~ department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are

provided by a private contract provider.

(b) ~~[A]~~ Each local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the ~~[Department of Human Services]~~ department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing mental health programs and services. The ~~[Department of Human Services]~~ department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local mental health authorities with regard to programs and services.

(4) ~~[Local]~~ Each local mental health ~~[authorities]~~ authority shall:

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

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

(i) inpatient care and services;

(ii) residential care and services;

(iii) outpatient care and services;

(iv) 24-hour crisis care and services;

(v) psychotropic medication management;

(vi) psychosocial rehabilitation including vocational training and skills development;

(vii) case management;

(viii) community supports including in-home services, housing, family support services, and respite services; and

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

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint, directly or by contract, a full-time or part-time director for mental health programs and prescribe ~~[his]~~ the director's duties;

(e) provide input and comment on new and revised policies established by the [~~state Board of Substance Abuse and Mental Health~~] board;

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

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the [~~Division of Substance Abuse and Mental Health~~] division to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

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

(k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities.

(5) Before disbursing any public funds, each local mental health [~~authorities~~] authority shall require that all entities that receive any public funds from a local mental health authority agree in writing that:

(a) the division may examine the entity's financial records;

(b) the county auditor may examine and audit the entity's financial records; and

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

(6) [~~Local~~] A local mental health [~~authorities~~] authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for mental health services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) For purposes of this section "public funds" means the same as that term is defined in Section [~~17A-3-603.5~~] 17-43-303.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 7. Section **17-43-302**, which is renumbered from Section 17A-3-603 is renumbered and amended to read:

~~[17A-3-603].~~ **17-43-302. Local mental health authorities -- Requirements prior to distributing public funds.**

(1) [~~The~~] Each local mental health authority shall award all public funds by complying with the requirements of Title 63, Chapter 56, Utah Procurement Code, or by complying with a county procurement ordinance which requires similar procurement practices.

(2) If all initial bids on the project are rejected, the authority shall publish a new invitation to bid in the manner specified in this [~~subsection~~] section. If no satisfactory bid is received by the authority when the bids received from the second invitation are opened, the authority may execute a contract without requiring competitive bidding.

~~[(3) (a) For purposes of this subsection, "governmental entity" means any political subdivision or institution of higher education of the state.]~~

~~[(b)]~~ (3) The local mental health authority need not comply with the procurement provisions of this section when it disburses public funds to [~~other governmental entities~~] another political subdivision of the state or an institution of higher education of the state.

(4) [~~Contracts~~] Each contract awarded by a local mental health authority shall be for a fixed amount and limited period. [~~Contracts~~] A contract may be modified due to changes in available funding for the same contract purpose without competition.

Section 8. Section **17-43-303**, which is renumbered from Section 17A-3-603.5 is renumbered and amended to read:

~~[17A-3-603.5].~~ **17-43-303. Definition of "public funds" -- Responsibility for oversight of public funds -- Mental health programs and services.**

(1) As used in this section, "public funds":

(a) means:

(i) federal [~~monies~~] money received from the [~~Department of Human Services~~] department or the Department of Health[~~;~~]; and

(ii) state [~~monies~~] money appropriated by the Legislature to the [~~Department of Human Services~~] department, the Department of Health, a county governing body, or a local mental health authority for the purposes of providing mental health programs or services[~~—"Public funds"~~]; and

(b) includes [~~those~~] that federal and state [~~monies that have~~] money:

(i) even after the money has been transferred by a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for the local mental health authority[~~—Those monies maintain the nature of "public funds"~~]; and

(ii) while in the possession of the private [~~entity that has an annual or otherwise ongoing contract with a local mental health authority to provide comprehensive mental health programs or services for the local mental health authority~~] provider.

(2) Each local mental health authority is responsible for oversight of all public funds received by it, to determine that those public funds are utilized in accordance with federal and state law, the rules and policies of the [~~Department of Human Services~~] department and the Department of Health, and the provisions of any contract between the local mental health authority and the [~~Department of Human Services~~] department, the Department of Health, or a private provider. That oversight includes requiring that neither the contract provider, as described in Subsection (1), nor any of its employees:

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

(b) knowingly violate, on more than one occasion, any applicable rule or policy of the [~~Department of Human Services~~] department or Department of Health, or any provision of contract between the local mental health authority and the [~~Department of Human Services~~] department, the Department of Health, or the private provider;

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

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

(e) fail to ensure competent oversight for lawful disbursement of public funds;

(f) appropriate public funds for an unlawful use or for a use that is not in compliance with contract provisions; or

(g) knowingly or intentionally use public funds unlawfully or in violation of a governmental contract provision, or in violation of state policy.

(3) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(4) A local mental health authority that knew or reasonably should have known of any of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective action in good faith shall, in addition to any other penalties provided by law, be required to make full and complete repayment to the state of all public funds improperly used or expended.

(5) Any public funds required to be repaid to the state by a local mental health authority pursuant to Subsection (4), based upon the actions or failure of the contract provider, may be recovered by the local mental health authority from its contract provider, in addition to the local mental health authority's costs and attorney's fees.

Section 9. Section **17-43-304**, which is renumbered from Section 17A-3-606 is renumbered and amended to read:

~~[17A-3-606].~~ **17-43-304. Contracts for mental health services provided by local mental health authorities.**

~~[Where]~~ If a local mental health authority has established a plan to provide services authorized by this part, and those services meet standards fixed by rules of the board, the local mental health authority may enter into a contract with the ~~[Division of Substance Abuse and Mental Health]~~ division for those services to be furnished by that local mental health authority

for an agreed compensation to be paid by the division.

Section 10. Section **17-43-305**, which is renumbered from Section 17A-3-607 is renumbered and amended to read:

~~[17A-3-607].~~ **17-43-305. Responsibility for cost of services provided by local mental health authority.**

~~[Whenever]~~ If a local mental health authority, through its designated provider, provides any service described in Subsection ~~[17A-3-602]~~ 17-43-301(3)(b) to a person who resides within the jurisdiction of another local mental health authority, the local mental health authority in whose jurisdiction the person resides is responsible for the cost of that service if its designated provider has authorized the provision of that service.

Section 11. Section **17-43-306**, which is renumbered from Section 17A-3-610 is renumbered and amended to read:

~~[17A-3-610].~~ **17-43-306. Authority to receive funds.**

~~[Local]~~ A local mental health ~~[authorities,]~~ authority and ~~[entities]~~ an entity that ~~[contract]~~ contracts with ~~[those authorities]~~ a local mental health authority to provide mental health services, may receive funds made available by federal, state, or local health, mental health, education, welfare, or other agencies.

Section 12. Section **17-43-307**, which is renumbered from Section 17A-3-611 is renumbered and amended to read:

~~[17A-3-611].~~ **17-43-307. Specified treatments prohibited -- Criminal penalties.**

(1) It is a misdemeanor to give shock treatment, lobotomy, or surgery to anyone without the written consent of ~~[his]~~ the person's next of kin or legal guardian. Services provided under this part are governed by ~~[the]~~ Title 58, Chapter 67, Utah Medical Practice Act.

(2) It is a felony to give psychiatric treatment, nonvocational mental health counseling, case-finding testing, psychoanalysis, drugs, shock treatment, lobotomy, or surgery to any individual for the purpose of changing his concept of, belief about, or faith in God.

Section 13. Section **17-43-308**, which is renumbered from Section 17A-3-601 is

renumbered and amended to read:

~~[17A-3-601].~~ **17-43-308. Local mental health advisory councils -- Powers and responsibilities.**

~~[Local mental health advisory councils may be established throughout the state. Their composition, purposes, duties, powers, and reimbursement shall be as follows:]~~

~~[(1) they may be established in each county, either separately or in conjunction with other counties;]~~

(1) A county legislative body may, separately or in conjunction with one or more other counties, establish a local mental health advisory council.

(2) Mental health advisory council members shall be appointed by their respective county [commissions] legislative bodies. Initially one-fourth of the members shall be appointed for one year, one-fourth for two years, one-fourth for three years, and one-fourth for four years. After the initial appointment, the term of each member shall be for four years. Vacancies shall be filled in the same manner as for unexpired terms. Council members may be removed for cause[;].

(3) [they] Each mental health advisory council shall be responsible and advisory to local mental health authorities in planning, organizing, and operating community mental health programs[;].

(4) Council members shall be selected from persons representative of interested groups in the community, including, [where] if possible[;]:

(a) an officer or employee of the school district within the city or county;

(b) one or more persons familiar with problems in mental health, as these are involved in proceedings in criminal, domestic, or juvenile courts;

(c) one or more members of voluntary health, welfare, or mental health associations or agencies; and

(d) at least one person licensed in this state to practice medicine and surgery in all their branches and engaged in the private practice of medicine[;].

(5) Council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties, from funds made available to local mental health authorities[;]

and].

(6) [~~councils~~] Each mental health advisory council shall be [~~agencies~~] an agent of the local mental health [~~authorities~~] authority, and [~~are~~] is subject to laws and requirements relating to [~~those authorities~~] the local mental health authority.

Section 14. Section **62A-2-101** is amended to read:

62A-2-101. Definitions.

As used in this chapter:

(1) "Adult day care" means continuous care and supervision for three or more adults for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Child" means a person under 18 years of age.

(3) "Child placing" means receiving, accepting, or providing custody or care for any child under 18 years of age, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child temporarily or permanently in a home for adoption; or

(c) foster home placement.

(4) "Client" means an individual who receives or has received services from a human services licensee under this chapter.

(5) "Day treatment" means specialized treatment for less than 24 hours a day for four or more persons who are unrelated to the owner or provider and who have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient environment or service.

(6) "Department" means the Department of Human Services.

(7) "Direct access" means that an individual has, or likely will have, contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch.

(8) "Director" means the director of the Office of Licensing.

(9) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

(10) "Elder adult" means a person 65 years of age or older.

(11) "Executive director" means the executive director of the department.

(12) "Human services licensee" or "licensee" means a youth program, resource family home, or a facility or program, licensed by the department, that provides care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification.

(13) "Licensing board" means the Human Services Licensing Board.

(14) "Minor" has the same meaning as "child."

(15) "Office" means the Office of Licensing within the Department of Human Services.

(16) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

(17) (a) "Person associated with the licensee" means an owner, director, member of the governing body, employee, provider of care, or volunteer of a human services licensee or of an applicant to become a licensee.

(b) Notwithstanding Subsection (17)(a), "person associated with the licensee" does not include an individual serving on either of the following bodies unless that individual has direct access to children or vulnerable adults:

(i) a county governing body designated as a local mental health authority under Section [~~17A-3-602~~] 17-43-301 or as a local substance abuse authority under Section [~~17A-3-701~~] 17-43-201; or

(ii) a board of an organization operating under a contract to provide comprehensive mental health or substance abuse programs or services for the local mental health authority or substance abuse authority.

(18) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who are disabled or who are experiencing a dislocation or emergency which prevents them from providing these services for themselves or their families. Treatment is not a necessary component of residential support.

(19) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, rehabilitation, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living independently in the community.

(20) "Resource family home" means a home licensed to provide services to a child in the custody of the state and includes a foster care home and a legal risk home.

(21) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment. Secure treatment differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures which are imposed on residents with neither their consent nor control.

(22) "Social detoxification" means short-term residential services for persons who are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and that include:

- (a) room and board for persons who are unrelated to the owner or manager of the facility;
- (b) specialized rehabilitation to acquire sobriety; and
- (c) aftercare services.

(23) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

(24) "Vulnerable adult" means an elder adult or an adult who has a mental or physical impairment that substantially affects the person's ability to:

- (a) provide personal protection;

- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(25) (a) "Youth program" means a nonresidential program, designed to provide behavioral, substance abuse or mental health services to minors that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services;
- (iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
- (iv) may or may not provide all or part of its services in the outdoors;
- (v) may or may not limit or censor access to parents or guardians; and
- (vi) prohibits or restricts a minor's ability to leave the program at any time of his own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 15. Section **62A-15-103** is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

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

(2) The division shall:

- (a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;
- (ii) render support and assistance to public schools through approved school-based

substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate and assist other organizations and private treatment centers for substance abusers, by providing them with essential materials for furthering programs of prevention and rehabilitation of actual and potential substance abusers; and

(v) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health; and

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

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

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

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

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

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;
(B) local mental health authorities; and
(C) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authorities;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services in accordance with board and division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services according to board and division policy;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

- (A) a statewide comprehensive continuum of substance abuse services;
- (B) a statewide comprehensive continuum of mental health services; and
- (C) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services and each local mental health authority's contract with its provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with board and division policy and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or monies.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract with its provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with its oversight and management responsibilities described in Sections [~~17A-3-601, 17A-3-603.5, 17A-3-701 and 17A-3-703~~] 17-43-201, 17-43-203, 17-43-303, and 17-43-308. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section [~~17A-3-603.5~~] 17-43-303 and to the responsibility and liability described in Section [~~17A-3-703~~] 17-43-203.

(5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) (a) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(b) Those donations, gifts, devises, or bequests shall be used by the division in performing its powers and duties. Any money so obtained shall be considered private nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund to be used by the division for substance abuse or mental health services. The state treasurer may invest the fund and all interest shall remain with the fund.

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

- (a) the use of public funds;
- (b) oversight responsibilities regarding public funds; and
- (c) governance of substance abuse and mental health programs and services.

Section 16. Section **62A-15-105** is amended to read:

62A-15-105. Authority and responsibilities of board.

The board is the policymaking body for the division and for programs funded with state and federal moneys under Sections [~~17A-3-602, 17A-3-606, 17A-3-701~~] 17-43-201, 17-43-301, 17-43-304, and 62A-15-110. The board shall:

(1) in establishing policy, seek input from local substance abuse authorities, local mental health authorities, consumers, providers, advocates, division staff, and other interested parties as determined by the board;

(2) establish, by rule, minimum standards for local substance abuse authorities and local mental health authorities;

(3) establish, by rule, procedures for developing its policies which ensure that local substance abuse authorities and local mental health authorities are given opportunity to comment and provide input on any new policy of the board or proposed changes in existing policy of the board;

(4) provide a mechanism for review of its existing policy, and for consideration of policy changes that are proposed by local substance abuse authorities or local mental health authorities;

(5) develop program policies, standards, rules, and fee schedules for the division; and

(6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, and screening and assessment that are described in Section 41-6-44.

Section 17. Section **62A-15-111** is amended to read:

62A-15-111. Responsibility for cost of services provided by local substance abuse or mental health authority.

Whenever a local substance abuse authority or local mental health authority, through its designated provider, provides any service described in Section [~~17A-3-602~~] 17-43-301 or Subsection [~~17A-3-701~~] 17-43-201(3) to a person who resides within the jurisdiction of another local authority, the local authority in whose jurisdiction the person resides is responsible for the cost of that service if its designated provider has authorized the provision of that service.

Section 18. Section **62A-15-202** is amended to read:

62A-15-202. Definitions.

As used in this part:

(1) "Juvenile substance abuse offender" means any juvenile found to come within the provisions of Section 78-3a-104 for a drug or alcohol related offense, as designated by the Board of Juvenile Court Judges.

(2) "Local substance abuse authority" means a county legislative body designated to provide substance abuse services in accordance with Section [~~17A-3-701~~] 17-43-201.

(3) "Teen substance abuse school" means any school established by the local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an educational, interpersonal, skill-building experience for juvenile substance abuse offenders and their parents or legal guardians.

Section 19. Section **62A-15-602** is amended to read:

62A-15-602. Definitions.

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

(1) "Adult" means a person 18 years of age or older.

(2) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.

(3) "Designated examiner" means a licensed physician, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.

(4) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of an

agency that has contracted with a local mental health authority to provide mental health services under Section [~~17A-3-606~~] 17-43-304.

(5) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

(6) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

(7) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

(8) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

(9) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

(10) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

(11) "Patient" means an individual who has been temporarily placed in the custody of a local mental health authority, or who has been committed to a local mental health authority either voluntarily or by court order.

(12) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Section 20. Section **63A-9-701** is amended to read:

63A-9-701. Subscription to motor pool by certain local government entities.

(1) The following local government entities may subscribe to the central motor pool service provided by the division subject to the conditions established in Subsection (2):

(a) local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act;

(b) local substance abuse authorities as defined in Section [~~17A-3-701~~] 17-43-201;

(c) local area agencies, as authorized by Section 62A-3-104, or their subcontractors who are local governmental or public entities; and

(d) local mental health authorities as defined in Section [~~17A-3-602~~] 17-43-301.

(2) The local government entities outlined in Subsection (1) may subscribe to the central motor pool service provided by the division only if:

(a) the director of the local government entity determines it will result in substantial cost savings or increased efficiency to the local government entity; and

(b) the central motor pool has sufficient vehicles available.

Section 21. **Coordination clause.**

If this bill and H.B. 165, Revisor's Statute, both pass, it is the intent of the Legislature that the amendments in this bill to Section 17-43-304, as renumbered from Section 17A-3-606, supercede the amendments to Section 17A-3-606 in H.B. 165.