

HB0211S01 compared with HB0211

~~text~~ shows text that was in HB0211 but was deleted in HB0211S01.

text shows text that was not in HB0211 but was inserted into HB0211S01.

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Representative Michael S. Kennedy proposes the following substitute bill:

SUBSTANCE ABUSE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends language in Title 62A, Chapter 2, Licensure of Programs and Facilities, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act, and creates a committee within the Utah Substance Abuse Advisory Council.

Highlighted Provisions:

This bill:

- ▶ defines and modifies terms;
- ▶ requires the Office of Licensing (the office) to charge an annual licensing fee to ~~residential treatment programs and~~ recovery residences;
- ▶ requires the Division of Substance Abuse and Mental Health to cooperate with and assist ~~private~~ treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by

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~~{providing them with essential materials for furthering programs of prevention and rehabilitation, including developing industry best practices}~~ identifying and disseminating information about effective practices and programs;

- ▶ creates a committee within the Utah Substance Abuse Advisory Council to study issues concerning recovery residences and substance abuse treatment; and
- ▶ makes conforming and technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a repeal date.

Utah Code Sections Affected:

AMENDS:

62A-2-101, as last amended by Laws of Utah 2012, Chapter 384

62A-2-108.2, as last amended by Laws of Utah 2008, Chapter 382

62A-15-103, as last amended by Laws of Utah 2013, Chapters 17, 167, and 400

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **62A-2-101** is amended to read:

62A-2-101. Definitions.

As used in this chapter:

- (1) "Adult day care" means nonresidential care and supervision:
 - (a) for three or more adults for at least four but less than 24 hours a day; and
 - (b) 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) (a) "Boarding school" means a private school that:
 - (i) uses a regionally accredited education program;
 - (ii) provides a residence to the school's students:
 - (A) for the purpose of enabling the school's students to attend classes at the school; and

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(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (2)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (26)(a); or

(B) provides the treatment or services described in Subsection (26)(a) on a limited basis, as described in Subsection (2)(b)(ii).

(b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or services described in Subsection (26)(a) on a limited basis if:

(A) the treatment or services described in Subsection (26)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (26)(a); or

(II) have a primary purpose of providing the services described in Subsection (26)(a).

(c) "Boarding school" does not include a therapeutic school.

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

(4) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

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

(c) foster home placement.

(5) "Client" means an individual who receives or has received services from a licensee.

(6) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

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

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(8) "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.

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

(10) "Domestic violence" is as defined in Section 77-36-1.

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

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

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

(14) "Foster home" means a temporary residential living environment for the care of:

(a) fewer than four foster children in the home of a licensed or certified foster parent;

or

(b) four or more children in the home of a licensed or certified foster parent if the children are siblings.

(15) (a) "Human services program" means a:

(i) foster home;

(ii) therapeutic school;

(iii) youth program;

(iv) resource family home; ~~or~~

(v) recovery residence; or

~~(v)~~ (vi) facility or program that provides:

(A) secure treatment;

(B) inpatient treatment;

(C) residential treatment;

(D) residential support;

(E) adult day care;

(F) day treatment;

(G) outpatient treatment;

(H) domestic violence treatment;

(I) child placing services;

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(J) social detoxification; or

(K) any other human services that are required by contract with the department to be licensed with the department.

(b) "Human services program" does not include a boarding school.

(16) "Licensee" means a person or human services program licensed by the office.

(17) "Local government" means a:

(a) city; or

(b) county.

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

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

(20) "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.

(21) (a) "Person associated with the licensee" means a person:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, or volunteer; or

(ii) applying to become affiliated with a licensee in any capacity listed under Subsection (21)(a)(i).

(b) Notwithstanding Subsection (21)(a), "person associated with the licensee" does not include an individual serving on the following bodies unless that individual has direct access to children or vulnerable adults:

(i) a local mental health authority under Section 17-43-301;

(ii) a local substance abuse authority under Section 17-43-201; or

(iii) a board of an organization operating under a contract to provide:

(A) mental health or substance abuse programs; or

(B) services for the local mental health authority or substance abuse authority.

(c) "Person associated with the licensee" does not include a guest or visitor whose access to children or vulnerable adults is directly supervised by the licensee at all times.

(22) "Recovery residence" means a home or facility, other than a residential treatment or residential support program, ~~in which~~ that meets at least two of the ~~owner, operator, or manager~~ following requirements:

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(a) provides a supervised living environment for individuals ~~recovering from a substance abuse disorder~~;

(b) requires more than half of the individuals in the residence to be recovering from a substance abuse disorder;

(c) provides or arranges for residents to receive services related to their recovery from a substance abuse disorder, either on or off site;

(d) holds the home or facility out as being a recovery residence; ~~and~~ or

(e) (i) receives public funding; or

(ii) runs the home or facility as a commercial venture for financial gain.

~~(22)~~ (23) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

~~(23)~~ (24) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with ~~(i)~~ dysfunctions or impairments that are:

~~(A)~~ (i) emotional;

~~(B)~~ (ii) psychological;

~~(C)~~ (iii) developmental; or

~~(D)~~ (iv) behavioral ~~or~~.

~~(ii) chemical dependencies.~~

(c) Treatment is not a necessary component of residential support.

(d) "Residential support" does not include:

(i) a recovery residence; or

(ii) residential services that are performed:

~~(i)~~ (A) exclusively under contract with the Division of Services for People with Disabilities; ~~and~~ or

~~(ii)~~ (B) in a facility that serves ~~less~~ fewer than four individuals.

~~(24)~~ (25) (a) "Residential treatment" means a 24-hour group living environment for

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four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school; ~~[or]~~

(ii) foster home~~[-];~~ or

(iii) recovery residence.

~~[(25)]~~ (26) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

~~[(26)]~~ (27) (a) "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.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

~~[(27)]~~ (28) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing 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.

~~[(28)]~~ (29) "Substance abuse treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

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(b) that provides the treatment or services described in Subsection [~~(28)~~] (29)(a) to persons with:

- (i) a diagnosed substance abuse disorder; or
- (ii) chemical dependency disorder.

[~~(29)~~] (30) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

- (i) the owner of the facility; or
- (ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

- (i) at home;
- (ii) in a public school; or
- (iii) in a nonresidential private school; and

(c) that offers:

- (i) room and board; and
- (ii) an academic education integrated with:
 - (A) specialized structure and supervision; or
 - (B) services or treatment related to:
 - (I) a disability;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.

[~~(30)~~] (31) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

[~~(31)~~] (32) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent 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

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(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

~~[(32)]~~ (33) (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

- (i) serves 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 the minor's own free will.

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

Section 2. Section **62A-2-108.2** is amended to read:

62A-2-108.2. Licensing residential treatment programs and recovery residences -- Notification of local government.

(1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.

- (b) The categories referred to in Subsection (1)(a) may be based on differences in:
- (i) services offered;
 - (ii) types of clients served;
 - (iii) risks posed to the community; or
 - (iv) other factors that make regulatory differences advisable.

(2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 62A-2-106, the office shall establish and enforce rules that:

- (a) relate generally to all categories of residential treatment program and recovery residence licenses; and
- (b) relate to specific categories of residential treatment program and recovery residence

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licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.

(3) (a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a ~~residential treatment program and a~~ recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.

(b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.

~~(3)~~ (4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:

- (a) the city in which the residential treatment program will be located; or
- (b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.

~~(4)~~ (5) The notice described in Subsection ~~(3)~~ (4) shall include the following information relating to the residential treatment program:

- (a) an accurate description of the residential treatment program;
- (b) the location where the residential treatment program will be operated;
- (c) the services that will be provided by the residential treatment program;
- (d) the type of clients that the residential treatment program will serve;
- (e) the category of license for which the residential treatment program is applying to the office;
- (f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and
- (g) any other information that the office may require by rule.

~~(5)~~ (6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:

- (a) a copy of the notice described in Subsection ~~(3)~~ (4); and
- (b) proof that the applicant served the notice described in Subsection ~~(3)~~ (4) on the governing body described in Subsection ~~(3)~~ (4).

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Section 3. 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. 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 with and assist [~~other organizations and {} private~~] treatment centers [~~for substance abusers~~], recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by [providing them with essential materials for furthering programs of prevention and rehabilitation - {} of actual and potential substance abusers] [, including developing industry best practices] identifying and disseminating information about effective practices and programs;

(v) promote integrated programs that address an individual's substance abuse, mental health, and physical healthcare needs;

(vi) evaluate the effectiveness of programs described in Subsection (2);

(vii) consider the impact of the programs described in Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(viii) 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;

(ii) provide direction over the state hospital including approval of its budget,

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administrative policy, and coordination of services with local service plans;

(iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that all individuals receiving services through local mental health authorities or the Utah State Hospital be informed about and, if desired, provided assistance in completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(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;

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

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

(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;

(C) services result in improved overall health and functioning; and

(D) 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 division rules 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 money;

(d) assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority to submit its plan to the division by May 1 of each year; and

(f) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state and its contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by them or their

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contract providers; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate.

(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 17-43-201, 17-43-203, 17-43-303, and 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 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 funds and shall be deposited into an interest-bearing expendable 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.

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(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.

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

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(9) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

- (a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
- (b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

Section 4. **Recovery Residences and Substance Abuse Treatment Committee -- Creation -- Membership.**

(1) In accordance with Subsection 63M-7-302(5), there is created a Recovery Residences and Substance Abuse Treatment Committee within the Utah Substance Abuse Advisory Council consisting of the following members:

(a) one member representing the Division of Substance Abuse and Mental Health, designated by the director of the division;

(b) one member representing the Office of Licensing within the Department of Human Services, designated by the director of the office;

(c) one member representing the Utah Substance Abuse Advisory Council, designated by the chair; and

(d) one member representing the Utah Support Advocates for Recovery Awareness or another foundation, association, or organization chartered to advocate for individuals recovering from a substance abuse disorder, designated by a majority of committee members.

(2) A majority of committee members may invite other individuals, including legislators, to become members of the committee.

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(3) A majority of the members of the committee constitutes a quorum.

Section 5. **Duties -- Interim report.**

(1) The committee shall study and make recommendations regarding:

(a) industry best practices for recovery residences;

(b) quality assurance metrics for measuring success rates for individuals recovering from a substance abuse disorder;

(c) the feasibility of prohibiting health benefit plans from making a direct payment to an enrollee for substance abuse treatment; and

(d) other issues concerning recovery residences and substance abuse treatment.

(2) The committee shall present a final report, including any proposed legislation, to the Health and Human Services Interim Committee before November 30, 2014.

Section 6. **Repeal date.**

Uncodified Section 4, which creates the Recovery Residences and Substance Abuse Treatment Committee, and Uncodified Section 5, Duties and Interim report, are repealed on November 30, 2014.

†

Legislative Review Note

~~as of 2-3-14 6:00 AM~~

~~Office of Legislative Research and General Counsel}~~