

## HB0259S01 compared with HB0259

~~{deleted text}~~ shows text that was in HB0259 but was deleted in HB0259S01.

inserted text shows text that was not in HB0259 but was inserted into HB0259S01.

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Representative Eric K. Hutchings proposes the following substitute bill:

### SUBSTANCE ABUSE TREATMENT FRAUD

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill enacts and amends provisions in ~~{the Insurance Code, the Utah Criminal Code, and}~~ the Utah Human Services Code related to substance abuse treatment fraud.

##### Highlighted Provisions:

This bill:

- ▶ ~~{enacts provisions to provide that a person commits a fraudulent insurance act if that person, with intent to deceive or defraud, pays or sponsors payment for a health insurance premium in order to directly or indirectly receive proceeds from the care or treatment of the insured}~~ amends the definition "recovery residence" in the Licensure of Programs and Facilities chapter of the Utah Human Services Code;
- ▶ amends provisions related to violations, penalties, and liability of human services programs;

## HB0259S01 compared with HB0259

- ▶ requires the Office of Licensing, Department of Human Services (office), to make rules establishing:
  - what constitutes an "outpatient treatment program";
  - a procedure requiring a licensee to ~~{allow}~~provide an insurer ~~{the ability to audit}~~ the licensee's records related to any services or supplies billed to the insurer; and
  - a protocol for the office to investigate and process complaints about licensees;
- ▶ directs the ~~{Office of Licensing, Department of Human Services,}~~office to electronically post notices of agency action on the office's website; and
- ▶ directs the Division of Substance Abuse and Mental Health, Department of Human Services, to make rules to develop minimum standards for licensed public and private providers of substance abuse and mental health programs.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{31A-31-103}~~62A-2-101, as last amended by Laws of Utah ~~{2004}~~2015, ~~{Chapter 104}~~Chapters 67 and 255

62A-2-106, as last amended by Laws of Utah 2013, Chapter 442

62A-2-108, as last amended by Laws of Utah 2012, Chapter 302

62A-2-112, as last amended by Laws of Utah 2009, Chapter 75

62A-2-113, as last amended by Laws of Utah 2005, Chapter 188

62A-2-116, as last amended by Laws of Utah 2005, Chapter 188

62A-15-103, as last amended by Laws of Utah 2015, Chapter 412

~~{76-6-521, as last amended by Laws of Utah 2004, Chapter 104~~

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

Section 1. Section ~~{31A-31-103}~~62A-2-101 is amended to read:

~~{31A-31-103. Fraudulent insurance act.}~~

## HB0259S01 compared with HB0259

~~—— (1) A person commits a fraudulent insurance act if that person with intent to deceive or defraud:~~

~~—— (a) knowingly presents or causes to be presented to an insurer any oral or written statement or representation knowing that the statement or representation contains false, incomplete, or misleading information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract;~~

~~—— (b) knowingly presents or causes to be presented to an insurer any oral or written statement or representation:~~

~~—— (i) (A) as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract; or~~

~~—— (B) in connection with any civil claim asserted for recovery of damages for personal or bodily injuries or property damage; and~~

~~—— (ii) knowing that the statement or representation contains false, incomplete, or misleading information concerning any fact or thing material to the claim;~~

~~—— (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance act;~~

~~—— (d) assists, abets, solicits, or conspires with another to commit a fraudulent insurance act;~~

~~—— (e) knowingly supplies false or fraudulent material information in any document or statement required by the department;~~

~~—— (f) knowingly fails to forward a premium to an insurer in violation of Section 31A-23a-411.1; [or]~~

~~—— (g) knowingly employs, uses, or acts as a runner for the purpose of committing a fraudulent insurance act[.]; or~~

~~—— (h) pays or sponsors payment for a health insurance premium in order to directly or indirectly receive proceeds from the care or treatment of the insured.~~

~~—— (2) A service provider commits a fraudulent insurance act if that service provider with intent to deceive or defraud:~~

~~—— (a) knowingly submits or causes to be submitted a bill or request for payment:~~

~~—— (i) containing charges or costs for an item or service that are substantially in excess of customary charges or costs for the item or service; or~~

## HB0259S01 compared with HB0259

~~—— (i) containing itemized or delineated fees for what would customarily be considered a single procedure or service;~~

~~—— (b) knowingly furnishes or causes to be furnished an item or service to a person:~~

~~—— (i) substantially in excess of the needs of the person; or~~

~~—— (ii) of a quality that fails to meet professionally recognized standards;~~

~~—— (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance act; or~~

~~—— (d) assists, abets, solicits, or conspires with another to commit a fraudulent insurance act.~~

~~—— (3) An insurer commits a fraudulent insurance act if that insurer with intent to deceive or defraud:~~

~~—— (a) knowingly withholds information or provides false or misleading information with respect to an application, coverage, benefits, or claims under a policy or certificate;~~

~~—— (b) assists, abets, solicits, or conspires with another to commit a fraudulent insurance act;~~

~~—— (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance act; or~~

~~—— (d) knowingly supplies false or fraudulent material information in any document or statement required by the department.~~

~~—— (4) An insurer or service provider is not liable for any fraudulent insurance act committed by an employee without the authority of the insurer or service provider unless the insurer or service provider knew or should have known of the fraudulent insurance act.~~

### ‡ **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) "Applicant" means:

(a) a person who applies for an initial license or a license renewal under this chapter;

## HB0259S01 compared with HB0259

(b) an individual who:

- (i) is associated with the licensee; and
- (ii) has direct access to a child or a vulnerable adult;

(c) an individual who is 12 years of age or older, other than the child or vulnerable adult who is receiving the service, who resides in a residence with the child or vulnerable adult who is receiving services from the person described in Subsection (2)(a) or (b), if the child or vulnerable adult is not receiving services in the child's or vulnerable adult's own residence; or

(d) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion.

(3) (a) "Associated with the licensee" means that an individual is:

(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 a capacity described in Subsection (3)(a)(i).

(b) "Associated with the licensee" does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or

(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised by the licensee at all times.

(4) (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

(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 (4)(b)(i); and

## HB0259S01 compared with HB0259

(iv) (A) does not provide the treatment or services described in Subsection (28)(a); or  
(B) provides the treatment or services described in Subsection (28)(a) on a limited basis, as described in Subsection (4)(b)(ii).

(b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection (28)(a) on a limited basis if:

(A) the treatment or services described in Subsection (28)(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 (28)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection (28)(a).

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

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

(6) "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.

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

(8) "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.

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

(10) "Direct access" means that an individual has, or likely will have:

(a) contact with or access to a child or vulnerable adult that provides the individual

## HB0259S01 compared with HB0259

with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.

(11) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual.

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

(13) "Domestic violence" means the same as that term is defined in Section 77-36-1.

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

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

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

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

(a) (i) fewer than five foster children in the home of a licensed foster parent; or

(ii) five or more foster children in the home of a licensed foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group; or

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

(ii) four or more foster children in the home of a certified foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group.

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

(i) foster home;

(ii) therapeutic school;

(iii) youth program;

(iv) resource family home;

(v) recovery residence; or

(vi) facility or program that provides:

(A) secure treatment;

(B) inpatient treatment;

(C) residential treatment;

## HB0259S01 compared with HB0259

- (D) residential support;
- (E) adult day care;
- (F) day treatment;
- (G) outpatient treatment;
- (H) domestic violence treatment;
- (I) child placing services;
- (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.

(19) "Licensee" means an individual or a human services program licensed by the office.

(20) "Local government" means a:

- (a) city; or
- (b) county.

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

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

(23) "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.

(24) (a) "Recovery residence" means a home, residence, or facility ~~other than a residential treatment or residential support program;~~ that meets at least two of the following requirements:

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

~~(b) requires~~ (ii) provides a living environment in which more than half of the individuals in the residence ~~to be~~ are recovering from a substance abuse disorder;

~~(c)~~ (iii) 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; or~~

~~(e) (i)~~

## HB0259S01 compared with HB0259

(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

~~[(e)-(f)]~~ (v) (A) receives public funding; or

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

(B) is run as a business venture, either for-profit or not-for-profit.

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support; or

(iii) a home, residence, or facility, in which:

(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

(25) "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.

(26) (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 dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

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

(d) "Residential support" does not include:

## HB0259S01 compared with HB0259

(i) a recovery residence; or

(ii) residential services that are performed:

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

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

(27) (a) "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, 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;

(ii) foster home; or

(iii) recovery residence.

(28) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

(29) (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.

(30) "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.

## HB0259S01 compared with HB0259

(31) "Substance abuse treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (31)(a) to persons

with:

(i) a diagnosed substance abuse disorder; or

(ii) chemical dependency disorder.

(32) "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.

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

(34) "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:

## HB0259S01 compared with HB0259

- (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.

(35) (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-2-106** is amended to read:

### **62A-2-106. Office responsibilities.**

- (1) Subject to the requirements of federal and state law, the office shall:
- (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
    - (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:
      - (A) fire safety;
      - (B) food safety;
      - (C) sanitation;
      - (D) infectious disease control;
      - (E) safety of the:

## HB0259S01 compared with HB0259

(I) physical facility and grounds; and  
(II) area and community surrounding the physical facility;  
(F) transportation safety;  
(G) emergency preparedness and response;  
(H) the administration of medical standards and procedures, consistent with the related provisions of this title;

(I) staff and client safety and protection;  
(J) the administration and maintenance of client and service records;  
(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;

(L) staff to client ratios; [and]

(M) access to firearms; and

(N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

(ii) basic health and safety standards for therapeutic schools, that shall be limited to:

(A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

(B) food safety;

(C) sanitation;

(D) infectious disease control, except that the standards are limited to:

(I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local Health Authorities; and

(II) requiring a separate room for clients who are sick;

(E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

(F) transportation safety;

(G) emergency preparedness and response;

(H) access to appropriate medical care, including:

(I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and

(II) storing, tracking, and securing medication;

## HB0259S01 compared with HB0259

(I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;

(J) the administration and maintenance of client and service records;

(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;

(L) staff to client ratios; ~~[and]~~

(M) access to firearms; and

(N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

(iii) procedures and standards for permitting a licensee to:

(A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:

(I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;

(II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);

(III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and

(IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or

(B) (I) provide residential treatment services to a child who is:

(Aa) 12 years old or older; and

(Bb) under the custody of the ~~[Division of Juvenile Justice Services]~~ Department of Human Services, or one of its divisions; and

(II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:

(Aa) at least 18 years old, but younger than 21 years old; and

(Bb) under the custody of the ~~[Division of Juvenile Justice Services]~~ Department of Human Services, or one of its divisions;

(iv) minimum administration and financial requirements for licensees;

(v) guidelines for variances from rules established under this Subsection (1); ~~[and]~~

(vi) minimum ethical responsibilities of an adoption agency licensed under this

## HB0259S01 compared with HB0259

chapter, including prohibiting an adoption agency or its employee from misrepresenting facts or information;

(vii) what constitutes an "outpatient treatment program" for purposes of this chapter;

(viii) a procedure requiring a licensee to ~~allow~~ provide an insurer ~~the ability to audit~~ the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;

(ix) a protocol for the office to investigate and process complaints about licensees; and

(x) a procedure for licensees to report incidents;

(b) enforce rules relating to the office;

(c) issue licenses in accordance with this chapter;

(d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:

(i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and

(ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;

(e) make rules to implement the provisions of Subsection (1)(d);

(f) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;

(g) collect licensure fees;

(h) notify licensees of the name of a person within the department to contact when filing a complaint;

(i) investigate complaints regarding any licensee or human services program;

(j) have access to all records, correspondence, and financial data required to be maintained by a licensee;

(k) have authority to interview any client, family member of a client, employee, or officer of a licensee; ~~and~~

(l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this chapter by following the procedures and requirements of Title 63G,

## HB0259S01 compared with HB0259

Chapter 4, Administrative Procedures Act[-]; and

(m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:

(a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:

(i) on the premises where the licensee operates its human services program;

(ii) by or against its clients; or

(iii) by or against a staff member while the staff member is on duty;

(b) immediately report to emergency medical services any medical emergency, as defined by rule:

(i) on the premises where the licensee operates its human services program;

(ii) involving its clients; or

(iii) involving a staff member while the staff member is on duty; and

(c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Section 3. Section 62A-2-108 is amended to read:

### **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

(1) Except as provided in Section 62A-2-110, a person, agency, firm, corporation, association, or governmental unit, acting severally or jointly with any other person, agency, firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this chapter and the rules under the authority of this chapter.

(2) (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:

(i) as a member;

(ii) as a partner;

## HB0259S01 compared with HB0259

(iii) as a shareholder; or

(iv) as a person or entity involved in the ownership or management of a ~~residential treatment~~ human services program owned or managed by the other person or entity.

(b) A license issued under this chapter may not be assigned or transferred.

(c) An application for a license under this chapter shall be treated as an application for reinstatement of a revoked license if:

(i) (A) the person or entity applying for the license had a license revoked under this chapter; and

(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or

(ii) a member of an entity applying for the license:

(A) (I) had a license revoked under this chapter; and

(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or

(B) (I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and

(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.

(3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.

(4) (a) Except as provided in Subsection (4)(c), each license issued under this chapter expires at midnight 12 months from the date of issuance unless it has been:

(i) previously revoked by the office; or

(ii) voluntarily returned to the office by the licensee.

(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:

(i) is not in compliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(ii) has engaged in a pattern of noncompliance with the:

(A) provisions of this chapter; or

## HB0259S01 compared with HB0259

(B) rules made under this chapter;

(iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or

(iv) has engaged in conduct that poses a substantial risk of harm to any person.

(c) The office may issue a renewal license that expires at midnight 24 months after the day on which it is issued if:

(i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and

(ii) the licensee has not violated this chapter or a rule made under this chapter.

(5) Any licensee that is in operation at the time rules are made in accordance with this chapter shall be given a reasonable time for compliance as determined by the rule.

(6) (a) A license for a human services program issued under this section shall apply to a specific human services program site.

(b) A human services program shall obtain a separate license for each site where the human services program is operated.

Section 4. Section 62A-2-112 is amended to read:

### **62A-2-112. Violations -- Penalties.**

~~[If the office finds that a violation has occurred under Section 62A-2-111, it may:]~~

(1) The office may deny, place conditions on, suspend, or revoke a human services license, if it finds, related to the human services program:

(a) that there has been a failure to comply with the rules established under this chapter;

~~[or]~~

(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

(c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.

(2) The office may restrict or prohibit new admissions to a human services program ~~[or facility]~~, if it finds:

(a) that there has been a failure to comply with rules established under this chapter; ~~[or]~~

(b) evidence of aiding, abetting, or permitting the commission of any illegal act ~~[in the human services program or facility.]~~ or

## HB0259S01 compared with HB0259

(c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.

Section 5. Section 62A-2-113 is amended to read:

### **62A-2-113. License revocation -- Suspension.**

(1) If a license is revoked, the office may not grant a new license unless:

(a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;

(b) the human services program is inspected by the office and found to be in compliance with all provisions of this chapter and applicable rules;

(c) at least ~~[one year has]~~ five years have passed since the day on which the licensee is served with final notice that the license is revoked; and

(d) the office determines that the interests of the public will not be jeopardized by granting the license.

(2) The office may suspend a license for no longer than one year.

(3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:

(a) conditions upon which the suspension was based have been completely or partially corrected; and

(b) interests of the public will not be jeopardized by restoration of the license.

Section 6. Section 62A-2-116 is amended to read:

### **62A-2-116. Violation -- Criminal penalties.**

(1) (a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this chapter is guilty of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of persons participating in that program.

(b) Conviction in a criminal proceeding does not preclude the office from:

(i) assessing a civil penalty or an administrative penalty;

(ii) denying, placing conditions on, suspending, or revoking a license; or

(iii) seeking injunctive or equitable relief.

(2) Any person that violates a provision of this chapter, lawful orders of the office, or

## HB0259S01 compared with HB0259

rules adopted under this chapter, may be assessed a penalty not to exceed the sum of \$10,000 per violation, in:

(a) a judicial civil proceeding; or

(b) in an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:

(a) seeking criminal penalties;

(b) denying, placing conditions on, suspending, or revoking a license; or

(c) seeking injunctive or equitable relief.

(4) The office may assess the human services program the cost incurred by the office in placing a monitor.

Section ~~3~~7. 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 treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the Department of Human Services under Title 62A, Chapter 2, Licensure of

## HB0259S01 compared with HB0259

### Programs and Facilities:

~~[(v)]~~ (vi) promote integrated programs that address an individual's substance abuse, mental health, physical health, and criminal risk factors;

~~[(vi)]~~ (vii) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with substance abuse and mental illness that addresses criminal risk factors;

~~[(vii)]~~ (viii) evaluate the effectiveness of programs described in Subsection (2);

~~[(viii)]~~ (ix) 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

~~[(ix)]~~ (x) 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, 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;

## HB0259S01 compared with HB0259

(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 that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, 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;

(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or

## HB0259S01 compared with HB0259

mental illness conditions or both, and who are involved in the criminal justice system;

(E) compliance, where appropriate, with the certification requirements in Subsection (2)(i); and

(F) 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;

(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 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; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

## HB0259S01 compared with HB0259

(h) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance abuse and mental health treatment to individuals who are required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated, including:

(i) collaboration with the Department of Corrections, the Utah Substance Abuse Advisory Council to develop and coordinate the standards, including standards for county and state programs serving individuals convicted of class A and class B misdemeanors;

(ii) determining that the standards ensure available treatment includes the most current practices and procedures demonstrated by recognized scientific research to reduce recidivism, including focus on the individual's criminal risk factors; and

(iii) requiring that all public and private treatment programs meet the standards established under this Subsection (2)(h) in order to receive public funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice for the costs of providing screening, assessment, prevention, treatment, and recovery support;

(i) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements and procedures for the certification of licensed public and private providers who provide, as part of their practice, substance abuse and mental health treatment to individuals involved in the criminal justice system, including:

(i) collaboration with the Department of Corrections, the Utah Substance Abuse Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement the certification process;

(ii) basing the certification process on the standards developed under Subsection (2)(h) for the treatment of individuals involved in the criminal justice system; and

(iii) the requirement that all public and private providers of treatment to individuals involved in the criminal justice system shall obtain certification on or before July 1, 2016, and shall renew the certification every two years, in order to qualify for funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice on or after July 1, 2016;

(j) [~~collaboration~~] collaborate with the Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed for the reduced recidivism efforts;

## **HB0259S01 compared with HB0259**

(ii) county jail and county behavioral health early-assessment resources needed for offenders convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;

(k) (i) establish performance goals and outcome measurements for all treatment programs for which minimum standards are established under Subsection (2)(h), including recidivism data and data regarding cost savings associated with recidivism reduction and the reduction in the number of inmates, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections; and

(ii) collect data to track and determine whether the goals and measurements are being attained and make this information available to the public;

(l) in its discretion, use the data to make decisions regarding the use of funds allocated to the division, the Administrative Office of the Courts, and the Department of Corrections to provide treatment for which standards are established under Subsection (2)(h); and

(m) annually, on or before August 31, submit the data collected under Subsection (2)(j) to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings based on the data and provide the report to the legislative Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

(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

## HB0259S01 compared with HB0259

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) 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.

(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. Section 76-6-521 is amended to read:~~

~~76-6-521. Fraudulent insurance act.~~

~~(1) A person commits a fraudulent insurance act if that person with intent to defraud:~~

~~(a) presents or causes to be presented any oral or written statement or representation knowing that the statement or representation contains false or fraudulent information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract;~~

## HB0259S01 compared with HB0259

- ~~—— (b) presents, or causes to be presented, any oral or written statement or representation:~~
- ~~—— (i) (A) as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract; or~~
- ~~—— (B) in connection with any civil claim asserted for recovery of damages for personal or bodily injuries or property damage; and~~
- ~~—— (ii) knowing that the statement or representation contains false or fraudulent information concerning any fact or thing material to the claim;~~
- ~~—— (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;~~
- ~~—— (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees for professional services, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions;~~
- ~~—— (e) knowingly employs, uses, or acts as a runner, as defined in Section 31A-31-102, for the purpose of committing a fraudulent insurance act;~~
- ~~—— (f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent insurance act; [or]~~
- ~~—— (g) knowingly supplies false or fraudulent material information in any document or statement required by the Department of Insurance[.]; or~~
- ~~—— (h) pays or sponsors payment for a health insurance premium in order to directly or indirectly receive proceeds from the care or treatment of the insured.~~
- ~~—— (2) (a) A violation of Subsection (1)(a) is a class B misdemeanor.~~
- ~~—— (b) A violation of Subsections (1)(b) through (1)(g) is punishable as in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value.~~
- ~~—— (3) A corporation or association is guilty of the offense of insurance fraud under the same conditions as those set forth in Section 76-2-204.~~
- ~~—— (4) The determination of the degree of any offense under Subsections (1)(b) through (1)(g) shall be measured by the total value of all property, money, or other things obtained or sought to be obtained by the fraudulent insurance act or acts described in Subsections (1)(b) through (1)(g).~~

**HB0259S01 compared with HB0259**

**Legislative Review Note**

**Office of Legislative Research and General Counsel**