

Representative Brad M. Daw proposes the following substitute bill:

OPIOID TREATMENT PROGRAMS AND CONTROLLED

SUBSTANCE DATABASE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill modifies provisions relating to opioid treatment programs and the controlled substance database.

Highlighted Provisions:

This bill:

- ▶ defines a term;
- ▶ modifies requirements relating to access to the controlled substance database for emergency departments in hospitals;
- ▶ requires pharmacists and others who dispense methadone to a patient for the treatment of a substance use disorder to check the controlled substances database;
- ▶ addresses penalties for failure to check the database;
- ▶ requires the Division of Substance Abuse and Mental Health to work

collaboratively with opioid treatment programs to:

- establish a registry of patients for the purpose of protecting the health and safety of patients;
- review and approve exceptions to federal and state dosage policies and procedures; and



- 26 • coordinate patients' access to medication during a crisis or emergency; and
- 27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **58-37f-301**, as last amended by Laws of Utah 2018, Chapter 123

35 **58-37f-304**, as last amended by Laws of Utah 2018, Chapters 281 and 327

36 **62A-15-102**, as last amended by Laws of Utah 2018, Chapter 414

37 **62A-15-103**, as last amended by Laws of Utah 2018, Chapter 322



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

40 Section 1. Section **58-37f-301** is amended to read:

41 **58-37f-301. Access to database.**

42 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
43 Administrative Rulemaking Act, to:

44 (a) effectively enforce the limitations on access to the database as described in this
45 part; and

46 (b) establish standards and procedures to ensure accurate identification of individuals
47 requesting information or receiving information without request from the database.

48 (2) The division shall make information in the database and information obtained from
49 other state or federal prescription monitoring programs by means of the database available only
50 to the following individuals, in accordance with the requirements of this chapter and division
51 rules:

52 (a) (i) personnel of the division specifically assigned to conduct investigations related
53 to controlled substance laws under the jurisdiction of the division; and

54 (ii) the following law enforcement officers, but the division may only provide
55 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
56 individuals for whom a controlled substance has been prescribed or to whom a controlled

57 substance has been dispensed:

58 (A) a law enforcement agency officer who is engaged in a joint investigation with the
59 division; and

60 (B) a law enforcement agency officer to whom the division has referred a suspected
61 criminal violation of controlled substance laws;

62 (b) authorized division personnel engaged in analysis of controlled substance
63 prescription information as a part of the assigned duties and responsibilities of their
64 employment;

65 (c) a board member if:

66 (i) the board member is assigned to monitor a licensee on probation; and

67 (ii) the board member is limited to obtaining information from the database regarding
68 the specific licensee on probation;

69 (d) a member of a diversion committee established in accordance with Subsection
70 58-1-404(2) if:

71 (i) the diversion committee member is limited to obtaining information from the
72 database regarding the person whose conduct is the subject of the committee's consideration;
73 and

74 (ii) the conduct that is the subject of the committee's consideration includes a violation
75 or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant
76 violation or potential violation under this title;

77 (e) in accordance with a written agreement entered into with the department,
78 employees of the Department of Health:

79 (i) whom the director of the Department of Health assigns to conduct scientific studies
80 regarding the use or abuse of controlled substances, if the identity of the individuals and
81 pharmacies in the database are confidential and are not disclosed in any manner to any
82 individual who is not directly involved in the scientific studies;

83 (ii) when the information is requested by the Department of Health in relation to a
84 person or provider whom the Department of Health suspects may be improperly obtaining or
85 providing a controlled substance; or

86 (iii) in the medical examiner's office;

87 (f) in accordance with a written agreement entered into with the department, a designee

88 of the director of the Department of Health, who is not an employee of the Department of
89 Health, whom the director of the Department of Health assigns to conduct scientific studies
90 regarding the use or abuse of controlled substances pursuant to an application process
91 established in rule by the Department of Health, if:

92 (i) the designee provides explicit information to the Department of Health regarding
93 the purpose of the scientific studies;

94 (ii) the scientific studies to be conducted by the designee:

95 (A) fit within the responsibilities of the Department of Health for health and welfare;

96 (B) are reviewed and approved by an Institutional Review Board that is approved for
97 human subject research by the United States Department of Health and Human Services; and

98 (C) are not conducted for profit or commercial gain; and

99 (D) are conducted in a research facility, as defined by division rule, that is associated
100 with a university or college accredited by one or more regional or national accrediting agencies
101 recognized by the United States Department of Education;

102 (iii) the designee protects the information as a business associate of the Department of
103 Health; and

104 (iv) the identity of the prescribers, patients, and pharmacies in the database are
105 de-identified, confidential, not disclosed in any manner to the designee or to any individual
106 who is not directly involved in the scientific studies;

107 (g) in accordance with the written agreement entered into with the department and the
108 Department of Health, authorized employees of a managed care organization, as defined in 42
109 C.F.R. Sec. 438, if:

110 (i) the managed care organization contracts with the Department of Health under the
111 provisions of Section 26-18-405 and the contract includes provisions that:

112 (A) require a managed care organization employee who will have access to information
113 from the database to submit to a criminal background check; and

114 (B) limit the authorized employee of the managed care organization to requesting
115 either the division or the Department of Health to conduct a search of the database regarding a
116 specific Medicaid enrollee and to report the results of the search to the authorized employee;
117 and

118 (ii) the information is requested by an authorized employee of the managed care

119 organization in relation to a person who is enrolled in the Medicaid program with the managed
120 care organization, and the managed care organization suspects the person may be improperly
121 obtaining or providing a controlled substance;

122 (h) a licensed practitioner having authority to prescribe controlled substances, to the
123 extent the information:

124 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

125 (B) is provided to or sought by the practitioner for the purpose of:

126 (I) prescribing or considering prescribing any controlled substance to the current or
127 prospective patient;

128 (II) diagnosing the current or prospective patient;

129 (III) providing medical treatment or medical advice to the current or prospective
130 patient; or

131 (IV) determining whether the current or prospective patient:

132 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

133 or

134 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
135 substance from the practitioner;

136 (ii) (A) relates specifically to a former patient of the practitioner; and

137 (B) is provided to or sought by the practitioner for the purpose of determining whether
138 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
139 controlled substance from the practitioner;

140 (iii) relates specifically to an individual who has access to the practitioner's Drug
141 Enforcement Administration identification number, and the practitioner suspects that the
142 individual may have used the practitioner's Drug Enforcement Administration identification
143 number to fraudulently acquire or prescribe a controlled substance;

144 (iv) relates to the practitioner's own prescribing practices, except when specifically
145 prohibited by the division by administrative rule;

146 (v) relates to the use of the controlled substance database by an employee of the
147 practitioner, described in Subsection (2)(i); or

148 (vi) relates to any use of the practitioner's Drug Enforcement Administration
149 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a

150 controlled substance;

151 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in
152 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

153 (i) the employee is designated by the practitioner as an individual authorized to access
154 the information on behalf of the practitioner;

155 (ii) the practitioner provides written notice to the division of the identity of the
156 employee; and

157 (iii) the division:

158 (A) grants the employee access to the database; and

159 (B) provides the employee with a password that is unique to that employee to access
160 the database [~~in order to permit the division to comply with the requirements of Subsection~~
161 ~~58-37f-203(5) with respect to the employee~~];

162 (j) an employee of the same business that employs a licensed practitioner under
163 Subsection (2)(h) if:

164 (i) the employee is designated by the practitioner as an individual authorized to access
165 the information on behalf of the practitioner;

166 (ii) the practitioner and the employing business provide written notice to the division of
167 the identity of the designated employee; and

168 (iii) the division:

169 (A) grants the employee access to the database; and

170 (B) provides the employee with a password that is unique to that employee to access
171 the database [~~in order to permit the division to comply with the requirements of Subsection~~
172 ~~58-37f-203(5) with respect to the employee~~];

173 (k) a licensed pharmacist having authority to dispense a controlled substance to the
174 extent the information is provided or sought for the purpose of:

175 (i) dispensing or considering dispensing any controlled substance; or

176 (ii) determining whether a person:

177 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

178 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
179 substance from the pharmacist;

180 (l) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy

181 intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes
182 described in Subsection (2)(j)(i) or (ii), if:

183 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
184 to access the information on behalf of a licensed pharmacist employed by the pharmacy;

185 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
186 the employee; and

187 (iii) the division:

188 (A) grants the employee access to the database; and

189 (B) provides the employee with a password that is unique to that employee to access
190 the database [~~in order to permit the division to comply with the requirements of Subsection~~
191 ~~58-37f-203(5) with respect to the employee~~];

192 (m) pursuant to a valid search warrant, federal, state, and local law enforcement
193 officers and state and local prosecutors who are engaged in an investigation related to:

194 (i) one or more controlled substances; and

195 (ii) a specific person who is a subject of the investigation;

196 (n) subject to Subsection (7), a probation or parole officer, employed by the
197 Department of Corrections or by a political subdivision, to gain access to database information
198 necessary for the officer's supervision of a specific probationer or parolee who is under the
199 officer's direct supervision;

200 (o) employees of the Office of Internal Audit and Program Integrity within the
201 Department of Health who are engaged in their specified duty of ensuring Medicaid program
202 integrity under Section 26-18-2.3;

203 (p) a mental health therapist, if:

204 (i) the information relates to a patient who is:

205 (A) enrolled in a licensed substance abuse treatment program; and

206 (B) receiving treatment from, or under the direction of, the mental health therapist as
207 part of the patient's participation in the licensed substance abuse treatment program described
208 in Subsection (2)(p)(i)(A);

209 (ii) the information is sought for the purpose of determining whether the patient is
210 using a controlled substance while the patient is enrolled in the licensed substance abuse
211 treatment program described in Subsection (2)(p)(i)(A); and

212 (iii) the licensed substance abuse treatment program described in Subsection
213 (2)(p)(i)(A) is associated with a practitioner who:
214 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
215 pharmacist; and
216 (B) is available to consult with the mental health therapist regarding the information
217 obtained by the mental health therapist, under this Subsection (2)(p), from the database;
218 (q) an individual who is the recipient of a controlled substance prescription entered into
219 the database, upon providing evidence satisfactory to the division that the individual requesting
220 the information is in fact the individual about whom the data entry was made;
221 (r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the
222 persons and entities that have requested or received any information from the database
223 regarding the individual, except if the individual's record is subject to a pending or current
224 investigation as authorized under this Subsection (2);
225 (s) the inspector general, or a designee of the inspector general, of the Office of
226 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
227 Title 63A, Chapter 13, Part 2, Office and Powers;
228 (t) the following licensed physicians for the purpose of reviewing and offering an
229 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
230 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:
231 (i) a member of the medical panel described in Section [34A-2-601](#);
232 (ii) a physician employed as medical director for a licensed workers' compensation
233 insurer or an approved self-insured employer; or
234 (iii) a physician offering a second opinion regarding treatment; and
235 (u) members of Utah's Opioid Fatality Review Committee, for the purpose of
236 reviewing a specific fatality due to opioid use and recommending policies to reduce the
237 frequency of opioid use fatalities.
238 (3) (a) (i) A practitioner described in Subsection (2)(h) may designate one or more
239 employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).
240 (ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may
241 designate up to five employees to access information from the database under Subsection (2)(l).
242 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

243 Administrative Rulemaking Act, to:

244 (i) establish background check procedures to determine whether an employee
245 designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;
246 and

247 (ii) establish the information to be provided by an emergency department employee
248 under Subsection (4); and

249 (iii) facilitate providing controlled substance prescription information to a third party
250 under Subsection (5).

251 (c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or
252 (4)(c) access to the database, unless the division determines, based on a background check, that
253 the employee poses a security risk to the information contained in the database.

254 (4) (a) An individual who is employed in the emergency department of a hospital may
255 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
256 the individual is designated under Subsection (4)(c) and the licensed practitioner:

257 (i) is employed in the emergency department;

258 (ii) is treating an emergency department patient for an emergency medical condition;

259 and

260 (iii) requests that an individual employed in the emergency department and designated
261 under Subsection (4)(c) obtain information regarding the patient from the database as needed in
262 the course of treatment.

263 (b) The emergency department employee obtaining information from the database
264 shall, when gaining access to the database, provide to the database the name and any additional
265 identifiers regarding the requesting practitioner as required by division administrative rule
266 established under Subsection (3)(b).

267 (c) An individual employed in the emergency department under this Subsection (4)
268 may obtain information from the database as provided in Subsection (4)(a) if:

269 (i) the employee is designated by the ~~[practitioner]~~ hospital operating the emergency
270 department as an individual authorized to access the information on behalf of the practitioner;

271 (ii) ~~[the practitioner and]~~ the hospital operating the emergency department ~~[provide]~~
272 provides written notice to the division of the identity of the designated employee; and

273 (iii) the division:

274 (A) grants the employee access to the database; and

275 (B) provides the employee with a password that is unique to that employee to access
276 the database [~~in order to permit the division to comply with the requirements of Subsection~~
277 ~~58-37f-203(5) with respect to the employee~~].

278 (d) The division may impose a fee, in accordance with Section ~~63J-1-504~~, on a
279 practitioner or a hospital who designates an employee under Subsection (2)(i), (2)(j), or (4)(c)
280 to pay for the costs incurred by the division to conduct the background check and make the
281 determination described in Subsection (3)(b).

282 (5) (a) (i) An individual may request that the division provide the information under
283 Subsection (5)(b) to a third party who is designated by the individual each time a controlled
284 substance prescription for the individual is dispensed.

285 (ii) The division shall upon receipt of the request under this Subsection (5)(a) advise
286 the individual in writing that the individual may direct the division to discontinue providing the
287 information to a third party and that notice of the individual's direction to discontinue will be
288 provided to the third party.

289 (b) The information the division shall provide under Subsection (5)(a) is:

290 (i) the fact a controlled substance has been dispensed to the individual, but without
291 identifying the controlled substance; and

292 (ii) the date the controlled substance was dispensed.

293 (c) (i) An individual who has made a request under Subsection (5)(a) may direct that
294 the division discontinue providing information to the third party.

295 (ii) The division shall:

296 (A) notify the third party that the individual has directed the division to no longer
297 provide information to the third party; and

298 (B) discontinue providing information to the third party.

299 (6) (a) An individual who is granted access to the database based on the fact that the
300 individual is a licensed practitioner or a mental health therapist shall be denied access to the
301 database when the individual is no longer licensed.

302 (b) An individual who is granted access to the database based on the fact that the
303 individual is a designated employee of a licensed practitioner shall be denied access to the
304 database when the practitioner is no longer licensed.

305 (7) A probation or parole officer is not required to obtain a search warrant to access the
306 database in accordance with Subsection (2)(n).

307 (8) The division shall review and adjust the database programming which
308 automatically logs off an individual who is granted access to the database under Subsections
309 (2)(h), (2)(i), (2)(j), and (4)(c) to maximize the following objectives:

310 (a) to protect patient privacy;

311 (b) to reduce inappropriate access; and

312 (c) to make the database more useful and helpful to a person accessing the database
313 under Subsections (2)(h), (2)(i), (2)(j), and (4)(c), especially in high usage locations such as an
314 emergency department.

315 Section 2. Section **58-37f-304** is amended to read:

316 **58-37f-304. Database utilization.**

317 (1) As used in this section:

318 (a) "Dispenser" means a licensed pharmacist, as described in Section [58-17b-303](#), or
319 the pharmacist's licensed intern, as described in Section [58-17b-304](#), who is also licensed to
320 dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

321 ~~[(b) "Outpatient" means a setting in which an individual visits a licensed healthcare
322 facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a
323 licensed healthcare facility for an overnight stay.]~~

324 ~~[(c)]~~ (b) "Prescriber" means an individual authorized to prescribe a controlled
325 substance under Title 58, Chapter 37, Utah Controlled Substances Act.

326 ~~[(d)]~~ (c) "Schedule II opioid" means ~~[those substances]~~ a substance listed in Subsection
327 [58-37-4\(2\)\(b\)\(i\)](#) or [\(2\)\(b\)\(ii\)](#).

328 ~~[(e)]~~ (d) "Schedule III opioid" means ~~[those substances]~~ a substance listed in
329 Subsection [58-37-4\(2\)\(c\)](#) that ~~[are opioids]~~ is an opioid.

330 (e) "Treatment dispenser" means a dispenser who dispenses methadone for the
331 treatment of a substance use disorder, as defined in Section [62A-15-1202](#).

332 (2) (a) A prescriber shall check the database for information about a patient before the
333 first time the prescriber gives a prescription to a patient for a Schedule II opioid or a Schedule
334 III opioid.

335 (b) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III opioid

336 to a patient, the prescriber shall periodically review information about the patient in:

337 (i) the database; or

338 (ii) other similar records of controlled substances the patient has filled.

339 (c) A prescriber may assign the access and review required under Subsection (2)(a) to

340 one or more employees in accordance with Subsections 58-37f-301(2)(i) and (j).

341 (d) (i) A prescriber may comply with [~~the requirements in~~] Subsections (2)(a) and (b)

342 by checking an electronic health record system if the electronic health record system:

343 (A) is connected to the database through a connection that has been approved by the

344 division; and

345 (B) displays the information from the database in a prominent manner for the

346 prescriber.

347 (ii) The division may not approve a connection to the database if the connection does

348 not satisfy the requirements established by the division under Section 58-37f-301.

349 (e) A prescriber is not in violation of [~~the requirements of~~] Subsection (2)(a) or (b) if

350 the failure to comply with Subsection (2)(a) or (b):

351 (i) is necessary due to an emergency situation;

352 (ii) is caused by a suspension or disruption in the operation of the database; or

353 (iii) is caused by a failure in the operation or availability of the Internet.

354 (f) The division may not take action against the license of a prescriber for failure to

355 comply with this Subsection (2) unless the failure occurs after the earlier of:

356 (i) December 31, 2018; or

357 (ii) the date that the division has the capability to establish a connection that meets the

358 requirements established by the division under Section 58-37f-301 between the database and an

359 electronic health record system.

360 (3) (a) A treatment dispenser shall check the database for information about a patient

361 before the first time the treatment dispenser dispenses methadone to the patient.

362 (b) If a treatment dispenser is repeatedly dispensing methadone to a patient, the

363 treatment dispenser shall, at least each calendar month that the treatment dispenser dispenses

364 methadone to the patient, review information about the patient in:

365 (i) the database; or

366 (ii) other similar records of controlled substances the patient has filled.

367 (c) (i) A treatment dispenser may comply with Subsections (3)(a) and (b) by checking
368 an electronic health record system if the electronic health record system:

369 (A) is connected to the database through a connection that has been approved by the
370 division; and

371 (B) displays the information from the database in a prominent manner for the treatment
372 dispenser.

373 (ii) The division may not approve a connection to the database if the connection does
374 not satisfy the requirements established by the division under Section [58-37f-301](#).

375 (d) A treatment dispenser is not in violation of Subsection (3)(a) or (b) if the failure to
376 comply with Subsection (3)(a) or (b):

377 (i) is necessary due to an emergency situation;

378 (ii) is caused by a suspension or disruption in the operation of the database; or

379 (iii) is caused by a failure in the operation or availability of the Internet.

380 (e) The division may not take action against the license of a treatment dispenser for
381 failure to comply with this Subsection (3) unless the failure occurs after the earlier of:

382 (i) December 31, 2019; or

383 (ii) the date that the division has the capability to establish a connection that meets the
384 requirements established by the division under Section [58-37f-301](#) between the database and an
385 electronic health record system.

386 ~~[(3)]~~ (4) The division shall, in collaboration with the licensing boards for prescribers
387 and dispensers:

388 (a) develop a system that gathers and reports to prescribers and dispensers the progress
389 and results of the prescriber's and dispenser's individual access and review of the database, as
390 provided in this section; and

391 (b) reduce or waive the division's continuing education requirements regarding opioid
392 prescriptions, described in Section [58-37-6.5](#), including the online tutorial and test relating to
393 the database, for prescribers and dispensers whose individual utilization of the database, as
394 determined by the division, demonstrates substantial compliance with this section.

395 ~~[(4)]~~ (5) If the dispenser's access and review of the database suggest that the individual
396 seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with
397 generally recognized standards as provided in this section and Section [58-37f-201](#), the

398 dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed,
399 current, and professional decision regarding whether the prescribed opioid is medically
400 justified, notwithstanding the results of the database search.

401 ~~[(5)]~~ (6) (a) The division shall review the database to identify any prescriber who has a
402 pattern of prescribing opioids not in accordance with the recommendations of:

403 (i) the CDC Guideline for Prescribing Opioids for Chronic Pain, published by the
404 Centers for Disease Control and Prevention;

405 (ii) the Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain,
406 published by the Department of Health; or

407 (iii) other publications describing best practices related to prescribing opioids as
408 identified by division rule in accordance with Title 63G, Chapter 3, Utah Administrative
409 Rulemaking Act, and in consultation with the Physicians Licensing Board.

410 (b) The division shall offer education to a prescriber identified under this Subsection
411 ~~[(5)]~~ (6) regarding best practices in the prescribing of opioids.

412 (c) A decision by a prescriber to accept or not accept the education offered by the
413 division under this Subsection ~~[(5)]~~ (6) is voluntary.

414 (d) The division may not use an identification the division has made under this
415 Subsection ~~[(5)]~~ (6) or the decision by a prescriber to accept or not accept education offered by
416 the division under this Subsection ~~[(5)]~~ (6) in a licensing investigation or action by the
417 division.

418 (e) Any record created by the division as a result of this Subsection ~~[(5)]~~ (6) is a
419 protected record under Section [63G-2-305](#).

420 Section 3. Section **62A-15-102** is amended to read:

421 **62A-15-102. Definitions.**

422 As used in this chapter:

423 (1) "Criminal risk factors" means a person's characteristics and behaviors that:

424 (a) affect the person's risk of engaging in criminal behavior; and

425 (b) are diminished when addressed by effective treatment, supervision, and other
426 support resources, resulting in reduced risk of criminal behavior.

427 (2) "Director" means the director of the Division of Substance Abuse and Mental
428 Health.

429 (3) "Division" means the Division of Substance Abuse and Mental Health established
430 in Section [62A-15-103](#).

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

432 (5) "Local substance abuse authority" means a county legislative body.

433 (6) "Mental health crisis" means:

434 (a) a mental health condition that manifests in an individual by symptoms of sufficient
435 severity that a prudent layperson who possesses an average knowledge of mental health issues
436 could reasonably expect the absence of immediate attention or intervention to result in:

437 (i) serious danger to the individual's health or well-being; or

438 (ii) a danger to the health or well-being of others; or

439 (b) a mental health condition that, in the opinion of a mental health therapist or the
440 therapist's designee, requires direct professional observation or intervention.

441 (7) "Mental health crisis response training" means community-based training that
442 educates laypersons and professionals on the warning signs of a mental health crisis and how to
443 respond.

444 (8) "Mental health crisis services" means an array of services provided to an individual
445 who experiences a mental health crisis, which may include:

446 (a) direct mental health services;

447 (b) on-site intervention provided by a mobile crisis outreach team;

448 (c) the provision of safety and care plans;

449 (d) prolonged mental health services for up to 90 days after the day on which an
450 individual experiences a mental health crisis;

451 (e) referrals to other community resources;

452 (f) local mental health crisis lines; and

453 (g) the statewide mental health crisis line.

454 (9) "Mental health therapist" means the same as that term is defined in Section
455 [58-60-102](#).

456 (10) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and
457 mental health professionals that, in coordination with local law enforcement and emergency
458 medical service personnel, provides mental health crisis services.

459 (11) "Opioid treatment program" means a program or practitioner engaged in opioid

460 treatment of individuals with an opioid agonist treatment medication registered under 21
461 U.S.C. Sec. 823(g)(1).

462 ~~[(11)]~~ (12) (a) "Public funds" means federal money received from the Department of
463 Human Services or the Department of Health, and state money appropriated by the Legislature
464 to the Department of Human Services, the Department of Health, a county governing body, or a
465 local substance abuse authority, or a local mental health authority for the purposes of providing
466 substance abuse or mental health programs or services.

467 (b) "Public funds" include federal and state money that has been transferred by a local
468 substance abuse authority or a local mental health authority to a private provider under an
469 annual or otherwise ongoing contract to provide comprehensive substance abuse or mental
470 health programs or services for the local substance abuse authority or local mental health
471 authority. The money maintains the nature of "public funds" while in the possession of the
472 private entity that has an annual or otherwise ongoing contract with a local substance abuse
473 authority or a local mental health authority to provide comprehensive substance abuse or
474 mental health programs or services for the local substance abuse authority or local mental
475 health authority.

476 (c) Public funds received for the provision of services pursuant to substance abuse or
477 mental health service plans may not be used for any other purpose except those authorized in
478 the contract between the local mental health or substance abuse authority and provider for the
479 provision of plan services.

480 ~~[(12)]~~ (13) "Severe mental disorder" means schizophrenia, major depression, bipolar
481 disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by
482 the division.

483 ~~[(13)]~~ (14) "Statewide mental health crisis line" means the same as that term is defined
484 in Section [63C-18-102](#).

485 Section 4. Section **62A-15-103** is amended to read:

486 **62A-15-103. Division -- Creation -- Responsibilities.**

487 (1) There is created the Division of Substance Abuse and Mental Health within the
488 department, under the administration and general supervision of the executive director. The
489 division is the substance abuse authority and the mental health authority for this state.

490 (2) The division shall:

- 491 (a) (i) educate the general public regarding the nature and consequences of substance
492 abuse by promoting school and community-based prevention programs;
- 493 (ii) render support and assistance to public schools through approved school-based
494 substance abuse education programs aimed at prevention of substance abuse;
- 495 (iii) promote or establish programs for the prevention of substance abuse within the
496 community setting through community-based prevention programs;
- 497 (iv) cooperate with and assist treatment centers, recovery residences, and other
498 organizations that provide services to individuals recovering from a substance abuse disorder,
499 by identifying and disseminating information about effective practices and programs;
- 500 (v) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
501 Rulemaking Act, to develop, in collaboration with public and private programs, minimum
502 standards for public and private providers of substance abuse and mental health programs
503 licensed by the department under Title 62A, Chapter 2, Licensure of Programs and Facilities;
- 504 (vi) promote integrated programs that address an individual's substance abuse, mental
505 health, physical health, and criminal risk factors;
- 506 (vii) establish and promote an evidence-based continuum of screening, assessment,
507 prevention, treatment, and recovery support services in the community for individuals with
508 substance use disorder and mental illness that addresses criminal risk factors;
- 509 (viii) evaluate the effectiveness of programs described in this Subsection (2);
- 510 (ix) consider the impact of the programs described in this Subsection (2) on:
- 511 (A) emergency department utilization;
- 512 (B) jail and prison populations;
- 513 (C) the homeless population; and
- 514 (D) the child welfare system; and
- 515 (x) promote or establish programs for education and certification of instructors to
516 educate persons convicted of driving under the influence of alcohol or drugs or driving with
517 any measurable controlled substance in the body;
- 518 (b) (i) collect and disseminate information pertaining to mental health;
- 519 (ii) provide direction over the state hospital including approval of its budget,
520 administrative policy, and coordination of services with local service plans;
- 521 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

522 Rulemaking Act, to educate families concerning mental illness and promote family
523 involvement, when appropriate, and with patient consent, in the treatment program of a family
524 member; and

525 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
526 Rulemaking Act, to direct that an individual receiving services through a local mental health
527 authority or the Utah State Hospital be informed about and, if desired by the individual,
528 provided assistance in the completion of a declaration for mental health treatment in
529 accordance with Section [62A-15-1002](#);

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

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

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

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

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

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

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

545 (viii) monitor the expenditure of public funds by:

546 (A) local substance abuse authorities;

547 (B) local mental health authorities; and

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

551 (ix) contract with local substance abuse authorities and local mental health authorities
552 to provide a comprehensive continuum of services that include community-based services for

553 individuals involved in the criminal justice system, in accordance with division policy, contract
554 provisions, and the local plan;

555 (x) contract with private and public entities for special statewide or nonclinical
556 services, or services for individuals involved in the criminal justice system, according to
557 division rules;

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

560 (A) a statewide comprehensive continuum of substance abuse services;

561 (B) a statewide comprehensive continuum of mental health services;

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

563 (D) a statewide comprehensive continuum of community-based services designed to
564 reduce criminal risk factors for individuals who are determined to have substance abuse or
565 mental illness conditions or both, and who are involved in the criminal justice system;

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

568 (F) appropriate expenditure of public funds;

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

574 (xiii) monitor and ensure compliance with division rules and contract requirements;
575 and

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

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

582 (e) require each local substance abuse authority and each local mental health authority,
583 in accordance with Subsections 17-43-201(5)(b) and 17-43-301~~(5)~~(6)(a)(ii), to submit a plan

584 to the division on or before May 15 of each year;

585 (f) conduct an annual program audit and review of each local substance abuse authority
586 and each local substance abuse authority's contract provider, and each local mental health
587 authority and each local mental health authority's contract provider, including:

588 (i) a review and determination regarding whether:

589 (A) public funds allocated to the local substance abuse authority or the local mental
590 health authorities are consistent with services rendered by the authority or the authority's
591 contract provider, and with outcomes reported by the authority's contract provider; and

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

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

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

598 (h) (i) train and certify an adult as a peer support specialist, qualified to provide peer
599 supports services to an individual with:

600 (A) a substance use disorder;

601 (B) a mental health disorder; or

602 (C) a substance use disorder and a mental health disorder;

603 (ii) certify a person to carry out, as needed, the division's duty to train and certify an
604 adult as a peer support specialist;

605 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
606 Rulemaking Act, that:

607 (A) establish training and certification requirements for a peer support specialist;

608 (B) specify the types of services a peer support specialist is qualified to provide;

609 (C) specify the type of supervision under which a peer support specialist is required to
610 operate; and

611 (D) specify continuing education and other requirements for maintaining or renewing
612 certification as a peer support specialist; and

613 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
614 Rulemaking Act, that:

615 (A) establish the requirements for a person to be certified to carry out, as needed, the
616 division's duty to train and certify an adult as a peer support specialist; and

617 (B) specify how the division shall provide oversight of a person certified to train and
618 certify a peer support specialist;

619 (i) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
620 Rulemaking Act, minimum standards and requirements for the provision of substance use
621 disorder and mental health treatment to an individual who is required to participate in treatment
622 by the court or the Board of Pardons and Parole, or who is incarcerated, including:

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

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

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

634 (j) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
635 Rulemaking Act, the requirements and procedures for the certification of licensed public and
636 private providers who provide, as part of their practice, substance use disorder and mental
637 health treatment to an individual involved in the criminal justice system, including:

638 (i) collaboration with the Department of Corrections, the Utah Substance Use and
639 Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate,
640 and implement the certification process;

641 (ii) basing the certification process on the standards developed under Subsection (2)(i)
642 for the treatment of an individual involved in the criminal justice system; and

643 (iii) the requirement that a public or private provider of treatment to an individual
644 involved in the criminal justice system shall obtain certification on or before July 1, 2016, and
645 shall renew the certification every two years, in order to qualify for funds allocated to the

646 division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice
647 on or after July 1, 2016;

648 (k) collaborate with the Commission on Criminal and Juvenile Justice to analyze and
649 provide recommendations to the Legislature regarding:

650 (i) pretrial services and the resources needed to reduce recidivism;

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

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

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

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

662 (m) work collaboratively with opioid treatment programs to establish a registry of
663 patients in opioid treatment programs for the purpose of protecting the health and safety of
664 patients;

665 (n) if designated as the specific state authority under 21 U.S.C. Sec. 823(j), coordinate
666 patients' access to medication during a crisis or emergency;

667 (o) if designated by the governor as the state authority under 42 C.F.R. Sec. 8.2 to
668 exercise the responsibility and authority within the state for governing the treatment of opioid
669 use disorder with an opioid drug;

670 (i) review and approve exceptions to federal and state dosage policies as provided in 42
671 C.F.R. Sec. 8.11; and

672 (ii) consult with the Substance Abuse and Mental Health Services Administration
673 regarding applications for certification or renewal of certification of an opioid treatment
674 program as provided in 42 C.F.R. Sec. 8.11;

675 [~~m~~] (p) in the division's discretion, use the data to make decisions regarding the use
676 of funds allocated to the division, the Administrative Office of the Courts, and the Department

677 of Corrections to provide treatment for which standards are established under Subsection (2)(i);
678 and

679 ~~[(m)]~~ (q) annually, on or before August 31, submit the data collected under Subsection
680 (2)(k) to the Commission on Criminal and Juvenile Justice, which shall compile a report of
681 findings based on the data and provide the report to the Judiciary Interim Committee, the
682 Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice
683 Interim Committee, and the related appropriations subcommittees.

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

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

691 (4) Before reissuing or renewing a contract with any local substance abuse authority or
692 local mental health authority, the division shall review and determine whether the local
693 substance abuse authority or local mental health authority is complying with the oversight and
694 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
695 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
696 liability described in Section 17-43-303 and to the responsibility and liability described in
697 Section 17-43-203.

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

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

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

708 regarding:

709 (a) use of public funds;

710 (b) oversight of public funds; and

711 (c) governance of substance use disorder and mental health programs and services.

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

714 (9) If a local substance abuse authority contacts the division under Subsection

715 [17-43-201](#)(10) for assistance in providing treatment services to a pregnant woman or pregnant
716 minor, the division shall:

717 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
718 capacity to provide the treatment services; or

719 (b) otherwise ensure that treatment services are made available to the pregnant woman
720 or pregnant minor.