CONSOLIDATED DRAFT BILLS FOR DISCUSSION PURPOSES ONLY

HEALTH AND HUMAN SERVICES RECODIFICATION

v.3 (11/11/22)

Bill file requested by the Health and Human Services Interim Committee on October 19, 2022, for consideration in its meeting on November 16, 2022.

Note: These consolidated drafts are being circulated with significant technical updates and internal and external statutory references that will be updated from this current version. Final draft bills will be posted separately for the committee's consideration in accordance with legislative rule. Bills are not combined in chapter order; see the outline or crosswalk for where an existing provision has been moved.

Please contact bill sponsor Sen. Jacob Anderegg (<u>janderegg@le.utah.gov</u>) or drafting attorney Daniel Cheung (<u>dcheung@le.utah.gov</u>) if you have any questions, comments, or suggestions.



HHS Recodification

Chapter & Part Index for Discussion Draft v.03 | November 11, 2022

Chapter 1. Department of Health and Human Services.

- Part 1. General Provisions.
- Part 2. Department of Health and Human Services.
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- Part 5. Fatality Review.

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- Part 2. Health Care Facility Licensing and Inspection.
- Part 3. Long Term Care Ombudsman.
- Part 4. Child Care Licensing.
- Part 5. Certifications.
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- Part 2. Medicaid Waivers.
- Part 3. Administration of Medicaid Programs.
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- Part 6. Medicaid Expansion Hospital Assessment.
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- Part 2. Substance Use Disorder Intervention, Prevention, and Education.
- Part 3. Utah State Hospital and Other Mental Health Facilities
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Chapter 6. Long Term Services and Supports, Aging, and Disabilities.

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- Part 2. Abuse, Neglect, or Exploitation of a Vulnerable Adult.
- Part 3. Office of Public Guardian.
- Part 4. Division of Services for People with Disabilities.
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- Part 6. Admission to an Intermediate Care Facility for People with an Intellectual Disability.
- Part 7. Disability Ombudsman.
- Part 8. Rights and Privileges of an Individual with a Disability.

Chapter 7. Public Health and Prevention.

- Part 1. Health Promotion and Risk Reduction.
- Part 3. Detection of Communicable Diseases and Public Health Emergencies.
- Part 4. Treatment, Isolation, and Quarantine Procedures for Communicable Diseases.
- Part 5. General Sanitation and Food Safety.
- Part 6. Regulation of Smoking, Tobacco Products, and Nicotine Products.

Chapter 8. Health Data, Vital Statistics, and Utah Medical Examiner

- Part 1. Vital Statistics.
- Part 2. Utah Medical Examiner.
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- Part 1. Office of Recovery Services.
- Part 2. Child Support Services.
- Part 3. Income Withholding in Child Support Cases.
- Part 4. Enforcement of Child Support Orders.

Bills

- 1. HHS Recodification Administration and Recovery Services (FL0860; Ch 1,2,9)
- 2. HHS Recodification Health Care Administration (FL0918; Ch 3,8)
- 3. HHS Recodification Health Care Delivery (FL0919; Ch 4)
- 4. HHS Recodification Prevention, Supports, Substance Use and Mental Health (FL0917; Ch 5,6,7)

Revisors Instructions

- 1. Effectiveness of the bill contingent on passage of all recodification bills
- 2. Authorization to renumber newly enacted sections that rely on existing definitions
- 3. Authorization to merge non-substantive conflicts

Current	NEW2 Section	Boldface
26B-1-102	(amended)	Definitions.
26B-1-103	(no change)	Purpose of title Consolidation of functions into single state agency.
26B-1-104	(no change)	Severability of code provisions.
26B-1-105	(no change)	Individual rights protected.
26B-1-201	(no change)	Department of Health and Human Services Creation Duties.
26B-1-202	(no change)	Department authority and duties.
26B-1-203	(no change)	Executive director Appointment Compensation Qualifications Deputy directors required Responsibilities.
26B-1-204	(no change)	Creation of boards, divisions, and offices Power to organize department.
26B-1-205	(no change)	Division directors Appointment Compensation Qualifications.
26B-1-206	(no change)	Limitation on establishment of advisory bodies.
		Policymaking responsibilities Regulations for local health departments prescribed by department Local standards not
		more stringent than federal or state standards Consultation with local health departments Committee to evaluate health
26B-1-207	(no change)	policies and to review federal grants.
26B-1-208	(no change)	Participation in federal programs Federal grants Authority of executive director.
26B-1-209	(no change)	Fee schedule adopted by department.
26B-1-210	(no change)	Department budget Reports from divisions.
26B-1-211	(no change)	Background checks for employees Access to abuse and neglect information to screen employees and volunteers.
26B-1-212	(no change)	Confidential records.
26B-1-213	(no change)	Department and committee rules and proceedings.
26B-1-301	(no change)	Executive director Power to accept funds and gifts.
26B-1-302	(no change)	National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account.
26B-1-304	(no change)	Restricted account created to fund drug testing for law enforcement agencies.
26B-1-305	(no change)	Department of Health and Human Services Transition Restricted Account.
26B-2-101	(replace)	Clinical services Reserved.
26B-3-101	(replace)	Licensing and oversight Reserved.
26B-4-101	(replace)	Health care administration Reserved.
26B-5-101 26B-6-101	(replace)	Health care services Reserved.
26B-7-101	(replace)	Long-term services and supports Reserved. Public health, prevention, and epidemiology Reserved.
26B-8-101	(replace)	Children, youth, and families Reserved.
26B-9-101	(replace)	Miscellaneous provisions Reserved.
26-1-10	26B-1-214	Executive director Enforcement powers.
62A-1-115	26B-1-215	Actions on behalf of department Party in interest.
62A-18-105	26B-1-216	Powers and duties of the office.
26-1-35	26B-1-217	Content and form of certificates and reports.
26-1-44	26B-1-218	Intergenerational poverty mitigation reporting.
26-1-45	26B-1-219	Requirements for issuing, recommending, or facilitating rationing criteria.
26-23-1	26B-1-220	Legal advice and representation for department.
26-23-2	26B-1-221	Administrative review of actions of department or director.
26-23-3	26B-1-222	Violation of public health laws or orders unlawful.
26-23-4	26B-1-223	Unlawful acts by department officers and employees.
26-23-6	26B-1-224	Criminal and civil penalties and liability for violations.
26-23-7	26B-1-225	Application of enforcement procedures and penalties.
26-23-8	26B-1-226	Representatives of department authorized to enter regulated premises.
26-23-9	<u>26B-1-227</u>	Authority of department as to functions transferred from other agencies.
26-23-10	26B-1-228	Religious exemptions from code Regulation of state-licensed healing system practice unaffected by code.
26-25-1	26B-1-229	Authority to provide data on treatment and condition of persons to designated agencies Immunity from liability.
26-68-102	26B-1-230	Governmental entities prohibited from requiring a COVID-19 vaccine.
26B-1a-104	26B-1-231	Duties of the office.
26B-1a-105	26B-1-232	American Indian-Alaska Native Health Liaison Appointment Duties.
26B-1a-106	26B-1-233	Indian Child Welfare Act Liaison Appointment Qualifications Duties.
62A-1-122	26B-1-234	Child pornography.
62A-4a-211	26B-1-235	Division responsibilities Normalizing lives of children.
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26-26-3	26B-1-236	voluntarily providing animal.
26-18-605	26B-1-237	Utah Office of Internal Audit.
26-10-8	26B-1-238	Request for proposal required for non-state supplied services.
26-8a-108	26B-1-306	Emergency Medical Services System Account.
26-8b-602	26B-1-307	Automatic External Defibrillator Restricted Account.
26.0.4	26D 1 209	Rural Health Care Facilities Account Source of revenues Interest Distribution of revenues Expenditure of revenues
26-9-4 26-18-402	26B-1-308	Unexpended revenues lapse into the General Fund. Medicaid Postricted Account
26-18-402 26-18-402.5	26B-1-309	Medicaid Restricted Account.
26-18-402.5 26-18a-4	26B-1-310 26B-1-311	Nonlapsing Medicaid funds. Creation of Kurt Oscarson Children's Organ Transplant Account.
∠U-100 -4	26B-1-311	Greation of Kart Oscarson Children's Organ Transplant Account.

Current	NEW2 Section	Boldface
26-18b-101	26B-1-312	Allyson Gamble Organ Donation Contribution Fund created.
26-21a-302	26B-1-313	Cancer Research Restricted Account.
26-21a-304	26B-1-314	Children with Cancer Support Restricted Account.
26-36b-208	26B-1-315	Medicaid Expansion Fund.
26-36d-207	26B-1-316	Hospital Provider Assessment Expendable Revenue Fund.
26-37a-107	26B-1-317	Ambulance Service Provider Assessment Expendable Revenue Fund.
26-50-201	26B-1-318	Traumatic Brain Injury Fund.
26-54-102	26B-1-319	Spinal Cord and Brain Injury Rehabilitation Fund Creation Administration Uses.
26-54-102.5	26B-1-320	Pediatric Neuro-Rehabilitation Fund Creation Administration Uses.
26-58-102	<u>26B-1-321</u>	Children with Heart Disease Support Restricted Account.
26-67-205	<u>26B-1-322</u>	Adult Autism Treatment Account.
62A-3-110	26B-1-323	"Out and About" Homebound Transportation Assistance Fund.
62A-15-123	26B-1-324	Statewide Behavioral Health Crisis Response Account Creation Administration Permitted uses.
62A-15-1103	26B-1-325	Governor's Suicide Prevention Fund.
62A-15-1104	<u>26B-1-326</u>	Suicide Prevention and Education Fund.
62A-15-1502	<u>26B-1-327</u>	Survivors of Suicide Loss Account.
62A-15-1602	<u>26B-1-328</u>	Psychiatric and Psychotherapeutic Consultation Program Account.
62A-15-1702	<u>26B-1-329</u>	Mental Health Services Donation Fund.
62A-5-206.5	<u>26B-1-330</u>	Utah State Developmental Center Miscellaneous Donation Fund Use.
62A-5-206.7	26B-1-331	Utah State Developmental Center Long-Term Sustainability Fund.
26-61a-109	26B-1-332	Qualified Patient Enterprise Fund Creation Revenue neutrality.
26-1-11	26B-1-401	Executive director Power to amend, modify, or rescind committee rules.
26-1-41	26B-1-402	Rare Disease Advisory Council Grant Program Creation Reporting.
26-7-13	26B-1-403	Opioid and Overdose Fatality Review Committee.
26-8a-103	26B-1-404	State Emergency Medical Services Committee Membership Expenses.
26-8a-107	26B-1-405	Air Ambulance Committee Membership Duties.
26-8a-251	26B-1-406	Trauma system advisory committee.
26-8d-104	26B-1-407	Stroke registry advisory committee.
26-8d-105 26-9f-103	26B-1-408	Cardiac registry advisory committee.
26-10b-106	26B-1-409	Utah Digital Health Service Commission. Primary Care Grant Committee.
20-100-100	<u>26B-1-410</u>	rimary care draft committee.
26-18a-2	26B-1-411	Creation and membership of Kurt Oscarson Children's Organ Transplant Coordinating Committee Expenses.
26-21-3	26B-1-412	Health Facility Committee Members Terms Organization Meetings.
26-33a-104	26B-1-413	Purpose, powers, and duties of the committee.
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26-39-201	26B-1-415	Residential Child Care Licensing Advisory Committee.
26-40-104	26B-1-416	Utah Children's Health Insurance Program Advisory Council.
26-50-202	26B-1-417	Traumatic Brain Injury Advisory Committee Membership Time limit.
		Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee Creation
26-54-103	26B-1-418	Membership Terms Duties.
26-46-103	26B-1-419	Advisory committee Membership Compensation Duties.
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26-66-202	26B-1-422	Early Childhood Utah Advisory Council Duties.
26-46a-104	26B-1-423	Rural Physician Loan Repayment Program Advisory Committee Membership Compensation Duties.
26-67-202	26B-1-423	Adult Autism Treatment Program Advisory Committee Membership Procedures Compensation Duties Expenses.
26-69-201	26B-1-425	Utah Health Workforce Advisory Council creation and membership.
		Board of Aging and Adult Services Members, appointment, terms, vacancies, chairperson, compensation, meetings,
62A-1-107	26B-1-426	quorum.
62A-1-121	26B-1-427	Tracking effects of abuse of alcoholic products.
26-7-10	26B-1-428	Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program.
62A-5-202.5	26B-1-429	Utah State Developmental Center Board Creation Membership Duties Powers.
62A-5a-103	26B-1-430	Coordinating Council for Persons with Disabilities Creation Membership Expenses.
62A-15-605	26B-1-431	Forensic Mental Health Coordinating Council Establishment and purpose.
62A-15-1902	26B-1-432	Mental Health Crisis Intervention Council Creation Membership Meetings Compensation Staff.
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62A-16-201	<u>26B-1-502</u>	Initial review.
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62A-16-202	<u>26B-1-503</u>	Developmental Center.
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62A-16-203		Fatality review committees for a resident of the Utah State Hospital or the Utah State Developmental Center.
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62A-16-204 62A-16-301	26B-1-505 26B-1-506	Fatality review committee proceedings. Fatality review committee report Response to report.
62A-16-204 62A-16-301 62A-16-302	26B-1-505 26B-1-506 26B-1-507	Fatality review committee proceedings. Fatality review committee report Response to report. Reporting to, and review by, legislative committees.
62A-16-204 62A-16-301	26B-1-505 26B-1-506	Fatality review committee proceedings. Fatality review committee report Response to report.

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62A-2-118	26B-2-107	Administrative inspections.
62A-2-119	26B-2-108	Adoption of inspections, examinations, and studies.
62A-2-124	26B-2-109	Human services program non-discrimination.
62A-2-113	26B-2-110	License revocation Suspension.
62A-2-111	26B-2-111	Adjudicative proceedings.
62A-2-112	26B-2-112	Violations Penalties.
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62A-2-110	26B-2-115	Exclusions from chapter.
62A-2-110	26B-2-116	Coordination of human services and educational services Licensing of programs Procedures.
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	26B-2-118	Request by local government.
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62A-2-120	26B-2-120	Background check Direct access to children or vulnerable adults.
62A-2-121	26B-2-121	Access to abuse and neglect information.
62A-2-122	26B-2-122	Access to vulnerable adult abuse and neglect information.
62A-2-123	26B-2-123	Congregate care program regulation.
62A-2-125	<u>26B-2-124</u>	Congregate care program requirements.
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26-21-7	26B-2-205	Exempt facilities.
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26-21-9	26B-2-207	Application for license Information required Public records.
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26-21-12	26B-2-211	License issued to facility in compliance or substantial compliance with chapter and rules.
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26-21-16	26B-2-216	Operating facility in violation of chapter a misdemeanor.
26-21-17	26B-2-217	Department agency of state to contract for certification of facilities under Social Security Act.
26-21-19	26B-2-218	Life and Health Insurance Guaranty Association Act not amended.
26-21-20	26B-2-219	Requirement for hospitals to provide statements of itemized charges to patients.
26-21-21	<u>26B-2-220</u>	Authentication of medical records.
26-21-22	<u>26B-2-221</u>	Reporting of disciplinary information Immunity from liability.
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26-21-24	26B-2-223	Prohibition against bed banking by nursing care facilities for Medicaid reimbursement.
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26-21-29	26B-2-228	Birthing centers Regulatory restrictions.
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		Treatment of aborted remains.

Current	NEW2 Section	Boldface
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26-21-303	26B-2-236	Monitoring device Installation, notice, and consent Liability.
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26-21-202	26B-2-239	Clearance required.
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62A-3-206	26B-2-305	Procedures Adjudicative proceedings.
02A-3-200	26B-2-306	Investigation of complaints Procedures.
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62A-3-207	26B-2-307	retaliatory actions prohibited.
62A-3-208	26B-2-308	Prohibited acts Penalty.
62A-3-209	<u>26B-2-309</u>	Assisted living facility transfers.
26-39-102	26B-2-401	Definitions.
26-39-301	<u>26B-2-402</u>	Duties of the department Enforcement of chapter Licensing committee requirements.
26-39-401	26B-2-403	Licensure requirements Expiration Renewal.
26-39-402	26B-2-404	Residential Child Care Certificate.
26-39-403	26B-2-405	Exclusions from chapter Criminal background checks by an excluded person.
26-39-404	26B-2-406	Disqualified individuals Criminal history checks Payment of costs.
26-39-405	26B-2-407	Drinking water quality in child care centers.
26-39-501	26B-2-408	Investigations Records.
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26-71-105	26B-2-505	Qualifications for certification.
26-71-106	26B-2-506	Certification is voluntary.
26-71-107	26B-2-507	Term of certification - Expiration - Renewal.
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26-21a-204	26B-2-603	Mammogram provider certification.
26-21a-205	26B-2-604	Department duties.
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26-19-102		Program established by department Promulgation of rules.
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26-19-301	<u>26B-3-1004</u>	Health insurance entity Duties related to state claims for Medicaid payment or recovery.
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26-19-303	26B-3-1006	Availability of insurance policy.
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26-19-603	26B-3-1026	Attorney general or county attorney to represent department.
26-19-604	26B-3-1027	Department's right to attorney fees and costs.
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26-15-13	26B-7-407	Regulation of tanning facilities.	
26-31-201	26B-7-408	Procurement and use of a blood product is a service and not a sale.	
26-51-201	26B-7-409	Scientific standards for methamphetamine decontamination.	
26-15a-104	26B-7-410	Food service establishment requirements Enforcement Right of appeal.	
26-15a-105	26B-7-411	Exemptions to food service establishment requirements.	
26-15a-106	26B-7-412	Certified food safety manager.	
26-15-5	26B-7-413	Requirements for food handlers Training program and testing requirements for permit Rulemaking.	

Current	NEW2 Section	Boldface	
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26-15b-105	26B-7-415	Permit requirements Inspections.	
26-15c-105	26B-7-416	Permit requirements.	
26-62-102	26B-7-501	Definitions.	
26-15-11	26B-7-502	Statutes on smoking considered public health laws.	
26-38-3	26B-7-503	Restriction on smoking in public places and in specified places Exceptions.	
26-43-102	26B-7-504	Gathering of information.	
26-57-103	26B-7-505	Electronic cigarette products Labeling Requirements to sell Advertising.	
26-62-103	26B-7-506	Regulation of tobacco retailers.	
26-62-201	26B-7-507	Permitting requirement.	
26-62-202	26B-7-508	Permit application. Permit term and fees.	
26-62-203	26B-7-509		
26-62-204	26B-7-510	Permit nontransferable.	
26-62-205	26B-7-511	Permit requirements for a retail tobacco specialty business.	
26-62-206	26B-7-512	Requirements for the sale of tobacco product, electronic cigarette product, or nicotine product.	
26-62-207	26B-7-513	Permit requirements for the sale of tobacco products and electronic cigarette products.	
26-62-301	26B-7-514	Permit violation.	
26-62-302	26B-7-515	Enforcement by state and local health departments.	
26-62-303	26B-7-516	Inspection of retail tobacco businesses.	
26-62-304	26B-7-517	Hearing Evidence of criminal conviction.	
26-62-305	26B-7-518	Penalties.	
26-62-306	26B-7-519	Recognition of tobacco retailer training program.	
26-62-307	26B-7-520	Allocation of civil penalties.	
26-62-401	26B-7-521	Verification of proof of age.	
26-2-2	26B-8-101	Definitions.	
26-2-3	26B-8-102	Department duties and authority.	
26-2-4	26B-8-103	Content and form of certificates and reports.	
26-2-5	26B-8-104	Birth certificates Execution and registration requirements.	
26-2-5.5	26B-8-105	Requirement to obtain parents' social security numbers.	
26-2-6	26B-8-106	Foundling certificates.	
26-2-7	26B-8-107	Correction of errors or omissions in vital records Conflicting birth and foundling certificates Rulemaking.	
26-2-8	26B-8-108	Birth certificates Delayed registration.	
26-2-9	26B-8-109	Birth certificates Petition for issuance of delayed certificate Court procedure.	
26-2-10	26B-8-110	Supplementary certificate of birth.	
26-2-11	26B-8-111	Name or sex change Registration of court order and amendment of birth certificate.	
26-2-11		Certified copies of birth certificates Fees credited to Children's Account.	
	26B-8-112	·	
26-2-12.6	26B-8-113	Fee waived for certified copy of birth certificate.	
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26-2-13	26B-8-114	Certificate of death Execution and registration requirements Information provided to lieutenant governor.	
26-2-14	26B-8-115	Fetal death certificate Filing and registration requirements.	
26-2-14.1	26B-8-116	Certificate of birth resulting in stillbirth.	
26-2-14.2	26B-8-117	Delayed registration of birth resulting in stillbirth.	
26-2-14.3	26B-8-118	Certificate of early term stillbirth.	
26-2-15	26B-8-119	Petition for establishment of unregistered birth or death Court procedure.	
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		Medical certification Records of funeral service director or dispositioner Information filed with local registrar Unlawful	
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		Certificate of death Registration prerequisite to interment Burial-transit permits Procedure where body donated under	
26-2-17	26B-8-121	anatomical gift law Permit for disinterment.	
26-2-18	26B-8-122	Interments Duties of sexton or person in charge Record of interments Information filed with local registrar.	
26-2-19	26B-8-123	Rules of department for transmittal of certificates and keeping of records by local registrar.	
26-2-21	26B-8-124	Local registrars authorized to issue certified copies of records.	
26-2-22	26B-8-125	Inspection of vital records.	
26-2-23	26B-8-126	Records required to be kept by health care institutions Information filed with local registrar and department.	
26-2-24	26B-8-127	Marriage licenses Execution and filing requirements.	
26-2-25	26B-8-128	Divorce or adoption Duty of court clerk to file certificates or reports.	
26-2-26	26B-8-129	Certified copies of vital records Preparation by state and local registrars Evidentiary value.	
26-2-27		Identifying birth certificates of missing persons Procedures.	
26-2-27	26B-8-130 26B-8-131	Birth certificate for foreign adoptees.	
26-2-28 26-34-4	26B-8-131	•	
20-34-4	26B-8-132	Determination of death made by registered nurse.	
26.22.5	2CD 0 422	Unlawful asta appropriate application propriate and application of the state of the	
26-23-5	26B-8-133	Unlawful acts concerning certificates, records, and reports Unlawful transportation or acceptance of dead human body.	
26-23-5.5	26B-8-134	Illegal use of birth certificate Penalties.	
26-4-2	<u>26B-8-201</u>	Definitions.	
26-4-4	26B-8-202	Chief medical examiner Appointment Qualifications Authority.	

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26-4-6	26B-8-204	Investigation of deaths Requests for autopsies.
26-4-7	26B-8-205	Custody by medical examiner.
26-4-8	26B-8-206	Discovery of dead body Notice requirements Procedure.
20 . 0	200 0 200	Processor of acoustical front of the first o
26-4-9	26B-8-207	Custody of dead body and personal effects Examination of scene of death Preservation of body Autopsies.
26-2-18.5	26B-8-208	Rendering a dead body unavailable for postmortem investigation.
26-4-10	26B-8-209	Certification of cause of death.
26-4-10.5	26B-8-210	Medical examiner to report death caused by prescribed controlled substance poisoning or overdose.
26-4-11	26B-8-211	Records and reports of investigations.
26-4-12	26B-8-212	Order to exhume body Procedure.
26-4-13	26B-8-213	Autopsies When authorized.
20 4 13	20B-6-213	Certification of death by attending health care professional Deaths without medical attendance Cause of death uncertain
26-4-14	26B-8-214	Notice requirements.
26-4-15	26B-8-215	Deaths in medical centers and federal facilities.
26-4-16	26B-8-216	Release of body for funeral preparations.
26-4-17		Records of medical examiner Confidentiality.
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26-4-18	26B-8-218	Records of medical examiner Admissibility as evidence Subpoena of person who prepared record.
26-4-19	26B-8-219	Personal property of deceased Disposition.
26-4-20	<u>26B-8-220</u>	Officials not liable for authorized acts.
26.4.24	260 0 221	Authority of county attorney or district attorney to subpoena witnesses and compel testimony Determination if decedent
26-4-21	26B-8-221	died by unlawful means.
26-4-22	<u>26B-8-222</u>	Additional powers and duties of department.
26-4-23	26B-8-223	Authority of examiner to provide organ or other tissue for transplant purposes.
26-4-24	26B-8-224	Autopsies Persons eligible to authorize.
		Burial of an unclaimed body Request by the school of medicine at the University of Utah Medical examiner may retain
26-4-25	26B-8-225	tissue for dog training.
26-4-26	26B-8-226	Social security number in certification of death.
26-4-27	26B-8-227	Registry of unidentified deceased persons.
26-4-28	26B-8-228	Testing for suspected suicides Maintaining information Compensation to deputy medical examiners.
26-4-28.5	26B-8-229	Psychological autopsy examiner.
26-4-29	26B-8-230	Application for permit to render a dead body unavailable for postmortem examination Fees.
26-4-30	26B-8-231	Overdose fatality examiner.
26-28-102	26B-8-301	Definitions.
26-28-103	26B-8-302	Applicability.
26-28-104	26B-8-303	Who may make anatomical gift before donor's death.
26-28-105	26B-8-304	Manner of making anatomical gift before donor's death.
26-28-106	26B-8-305	Amending or revoking anatomical gift before donor's death.
26-28-107	26B-8-306	Refusal to make anatomical gift Effect of refusal.
26-28-108	26B-8-307	Preclusive effect of anatomical gift, amendment, or revocation.
26-28-109	26B-8-308	Who may make anatomical gift of decedent's body or part.
26-28-110	26B-8-309	Manner of making, amending, or revoking anatomical gift of decedent's body or part.
26-28-111	26B-8-310	Persons that may receive anatomical gift Purpose of anatomical gift.
		Search and notification.
26-28-112 26-28-113	26B-8-311	
	26B-8-312	Delivery of document of gift not required Right to examine.
26-28-114	26B-8-313	Rights and duties of procurement organization and others.
26-28-115	26B-8-314	Coordination of procurement and use.
26-28-116	26B-8-315	Sale or purchase of parts prohibited.
26-28-117	26B-8-316	Other prohibited acts.
26-28-118	26B-8-317	Immunity.
26-28-119	<u>26B-8-318</u>	Law governing validity Choice of law as to execution of document of gift Presumption of validity.
26-28-120	26B-8-319	Donor registry.
26-28-121	26B-8-320	Effect of anatomical gift on advance health care directive.
26-28-122	26B-8-321	Cooperation between medical examiner and procurement organization.
26-28-123	26B-8-322	Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.
26-28-124	26B-8-323	Uniformity of application and construction.
26-28-125	26B-8-324	Relation to Electronic Signatures in Global and National Commerce Act.
26-3-1	26B-8-401	Definitions.
26-3-2	26B-8-402	Powers of department to collect and maintain health data.
26-3-4	26B-8-403	Quality and publication of statistics.
26-3-5	26B-8-404	Coordination of health data collection activities.
26-3-6	26B-8-405	Uniform standards Powers of department.
26-3-7	26B-8-406	Disclosure of health data Limitations.
26-3-8	26B-8-407	Disclosure of health data Discretion of department.
26-3-9	26B-8-408	Health data not subject to subpoena or compulsory process Exception.
26-3-10	26B-8-409	Department measures to protect security of health data.
26-3-11	26B-8-410	Relation to other chapters.
26-1-37		Duty to establish standards for the electronic exchange of clinical health information Immunity.
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26-33a-105	26B-8-502	Executive secretary Appointment Powers.	
26-33a-106	26B-8-503	Limitations on use of health data.	
26-33a-106.1	26B-8-504	Health care cost and reimbursement data.	
26-33a-106.5	26B-8-505	Comparative analyses.	
26-33a-100.3	26B-8-506	Limitations on release of reports.	
26-33a-107 26-33a-108			
26-33a-108 26-33a-109	26B-8-507	Disclosure of identifiable health data prohibited. Exceptions to prohibition on disclosure of identifiable health data.	
	26B-8-508		
26-33a-110	26B-8-509	Penalties.	
26-33a-111	26B-8-510	Health data not subject to subpoena or compulsory process Exception.	
26-33a-115	26B-8-511	Consumer-focused health care delivery and payment reform demonstration project.	
26-33a-116	26B-8-512	Health care billing data.	
26-33a-117	26B-8-513	Identifying potential overuse of non-evidence-based health care.	
26-70-102	26B-8-514	Standard health record access form.	
62A-11-103	26B-9-101	Definitions.	
62A-11-101	26B-9-102	Legislative intent Liberal construction.	
62A-11-102	26B-9-103	Office of Recovery Services Creation.	
62A-11-104	26B-9-104	Duties of office.	
62A-11-104.1	26B-9-105	Disclosure of information regarding employees.	
62A-11-105	26B-9-106	Adjudicative proceedings.	
		Office may file as real party in interest Written consent to payment agreements Money judgment in favor of obligee	
62A-11-106	26B-9-107	considered to be in favor of office to extent of right to recover.	
		Director Powers of office Representation by county attorney or attorney general Receipt of grants Rulemaking and	
62A-11-107	26B-9-108	enforcement.	
		Office designated as criminal justice agency Access by IV-D agencies to motor vehicle and law enforcement data through	
62A-11-108	26B-9-109	the office.	
62A-11-111	26B-9-110	Lien provisions.	
62A-1-117	26B-9-111	Assignment of support Children in state custody.	
62A-11-303	26B-9-201	Definitions.	
62A-11-302	26B-9-202	Common-law and statutory remedies augmented by act Public policy.	
62A-11-303.5	26B-9-203	Application for child support services.	
62A-11-303.7	26B-9-204	Annual fee for child support services to a custodial parent who has not received TANF assistance.	
62A-11-304.1	26B-9-205	Expedited procedures for establishing paternity or establishing, modifying, or enforcing a support order.	
02A 11 304.1	20B 3 203	Issuance or modification of administrative order Compliance with court order Authority of office Stipulated	
624 11 204 2	26B 0 206		
62A-11-304.2 62A-11-304.4	26B-9-206	agreements Notification requirements.	
	26B-9-207	Filing of location information Service of process.	
62A-11-304.5 62A-11-305	26B-9-208	Financial institutions.	
	26B-9-209	Support collection services requested by agency of another state.	
62A-11-306.1	26B-9-210	Issuance or modification of an order to collect support for persons not receiving public assistance.	
62A-11-306.2	26B-9-211	Mandatory review and adjustment of child support orders for TANF recipients.	
62A-11-307.1	26B-9-212	Collection directly from responsible parent.	
62A-11-307.2	26B-9-213	Duties of obligee after assignment of support rights.	
62A-11-312.5	26B-9-214	Liens by operation of law and writs of garnishment.	
62A-11-313	26B-9-215	Effect of Lien.	
62A-11-315.5	26B-9-216	Enforcement of liens arising in another state.	
		Requirement to honor voluntary assignment of earnings Discharge of employee prohibited Liability for discharge	
62A-11-316	26B-9-217	Earnings subject to support lien or garnishment.	
62A-11-319	26B-9-218	Release of lien, attachment, or garnishment by department.	
62A-11-320	26B-9-219	Payment schedules.	
62A-11-320.5	26B-9-220	Review and adjustment of child support order in three-year cycle Substantial change in circumstances not required.	
62A-11-320.6	26B-9-221	Review and adjustment of support order for substantial change in circumstances outside three-year cycle.	
62A-11-320.7	26B-9-222	Three-year notice of opportunity to review.	
62A-11-321	26B-9-223	Posting bond or security for payment of support debt Procedure.	
62A-11-326	26B-9-224	Medical and dental expenses of dependent children.	
62A-11-326.1	26B-9-225	Enrollment of child in accident and health insurance plan Order Notice.	
62A-11-326.2	26B-9-226	Compliance with order Enrollment of dependent child for insurance.	
62A-11-326.3	26B-9-227	Determination of parental liability.	
62A-11-327	26B-9-228	Reporting past-due support to consumer reporting agency.	
-2 21 32,			
62A-11-328	26B-9-229	Information received from State Tax Commission provided to other states' child support collection agencies.	
62A-11-333	26B-9-230	Right to judicial review.	
62A-11-334	26B-9-231	Reporting past-due support for criminal prosecution.	
62A-11-401	26B-9-301	Definitions.	
62A-11-402	26B-9-302	Administrative procedures.	
62A-11-403	26B-9-303	Provision for income withholding in child support order Immediate income withholding.	
62A-11-404	<u>26B-9-304</u>	Office procedures for income withholding for orders issued or modified on or after October 13, 1990.	

Current	NEW2 Section	Boldface	
62A-11-405	26B-9-305	Office procedures for income withholding for orders issued or modified before October 13, 1990.	
62A-11-406	26B-9-306	Notice to payor.	
62A-11-407	26B-9-307	Payor's procedures for income withholding.	
62A-11-408	26B-9-308	Termination of income withholding.	
62A-11-409	26B-9-309	Payor's compliance with income withholding.	
62A-11-410	26B-9-310	Violations by payor.	
62A-11-411	26B-9-311	Priority of notice or order to withhold income.	
		Records and documentation Distribution or refund of collected income Allocation of payments among multiple notices to	
62A-11-413	26B-9-312	withhold.	
62A-11-414	26B-9-313	Income withholding upon obligor's request.	
62A-11-501	26B-9-350	Definitions Application.	
62A-11-502	26B-9-351	Child support orders issued or modified on or after January 1, 1994 Immediate income withholding.	
62A-11-503	26B-9-352	Requirement of employment and location information.	
62A-11-504	26B-9-353	Procedures for commencing income withholding.	
62A-11-505	26B-9-354	Responsibilities of the office.	
62A-11-506	26B-9-355	Notice to payor.	
62A-11-507	26B-9-356	Payor's procedures for income withholding.	
62A-11-508	26B-9-357	Termination of income withholding.	
62A-11-509	26B-9-358	Payor's compliance with income withholding.	
62A-11-510	26B-9-359	Violations by payor.	
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62A-11-511	26B-9-360 26B-9-401	Priority of notice or order to withhold income. Definitions.	
62A-11-602	26B-9-401		
62A-11-603	26B-9-402	Suspension of driver license for child support delinquency Reinstatement.	
62A-11-604	26B-9-403	Notification of order to suspend or rescission of order.	
62A-11-703	26B-9-404	Alternative payment by obligor through electronic funds transfer.	
62A-11-704	<u>26B-9-405</u>	Mandatory distribution to obligee through electronic funds transfer.	
26-55-102	DELETE	Definitions.	
26-69-401	DELETE	Definitions.	
26-41-102	DELETE	Definitions.	
26-1-7.5	DELETE	Health advisory council.	
26-21-209	DELETE	Direct Access Clearance System database Contents Use.	
26-8a-211	DELETE	Report.	
26-8b-102	DELETE	Definitions.	
62A-6-101	DELETE	Definitions.	
26-6b-2	DELETE	Definitions.	
26-15-1	DELETE	Definitions.	
26-38-2	DELETE	Definitions.	
26-57-102	DELETE	Definitions.	
26-39-203	DELETE	Duties of the Child Care Center Licensing Committee.	
26-5-2	DELETE	Establishment of prevention programs by department.	
26-5-3	DELETE	System for detecting and monitoring diseases established by department.	
26-5-4	DELETE	Programs of community and professional education established by department.	
26-15b-102	DELETE	Definitions.	
26-15c-102	DELETE	Definitions.	
26-18-501	DELETE	Definitions.	
26-25-2	DELETE	Restrictions on use of data.	
26-25-3	DELETE	Information considered privileged communications.	
26-25-4	DELETE	Information held in confidence Protection of identities.	
26-25-5	DELETE	Violation of chapter a misdemeanor Civil liability.	
26-31-202	DELETE	Blood donation by a minor.	
26-51-202	DELETE	Public education concerning methamphetamine contamination.	
26-61-202	DELETE	Duties.	
26-61-202	DELETE	Council and executive director duties.	
26-69-203	DELETE	Members serve without pay Reimbursement for expenses.	
62A-11-702	DELETE	Definitions.	
62A-11-702 62A-15-1001	DELETE	Definitions.	
62A-15-1001 62A-15-1100	DELETE	Definitions.	
		Definitions.	
62A-15-1801	DELETE		
26-6-12	DELETE	Rabies or other animal disease Investigation following order of quarantine.	
26-6-13	DELETE	Rabies or other animal disease Authority of peace officer to kill or capture animals.	
26-6-14	DELETE	Rabies or other animal disease Quarantine defined.	
26-9f-102	DELETE	Definitions.	
26-9f-104	DELETE	Duties and responsibilities.	
26-18a-1	DELETE	Definitions.	
26-18a-3	DELETE	Purpose of committee.	
26-21-203	DELETE	Department authorized to grant, deny, or revoke clearance Department may limit direct patient access.	
26-21-206	DELETE	Covered providers and covered contractors required to apply for clearance of certain individuals.	

Current	NEW2 Section	Boldface
		Covered providers required to apply for clearance for certain individuals other than residents residing in residential settings
26-21-207	DELETE	Certain individuals other than residents prohibited from residing in residential settings without clearance.
26-21-208	DELETE	Application for clearance by individuals.
26-23a-1	DELETE	Definitions.
26-23a-3	DELETE	Penalties.
26-43-103	DELETE	Disclosure of information.
26-66-102	DELETE	Definitions.
26-66-201 26-66-203	DELETE DELETE	Early Childhood Utah Advisory Council.
26-70-101	DELETE	Compensation. Definitions.
62A-4a-210	DELETE	Definitions.
62A-5-401	DELETE	Purpose.
62A-5-403	DELETE	Services for persons under 11 years of age.
62A-15-1301	DELETE	Definitions.
62A-15-1303	DELETE	Statewide mental health crisis line and statewide warm line operational standards.
62A-15-1401	DELETE	Definitions.
62A-15-1501	DELETE	Definitions.
62A-15-1601	DELETE	Definitions.
62A-15-1701	DELETE	Definitions.
62A-15-1901	DELETE	Definitions.
62A-15-1903	DELETE	Council duties Training grants.
26-46-101	DELETE	Definitions.
26-21c-102	DELETE	Definitions.
26-21c-104	DELETE	Presenting protocols upon inspection.
26-8a-104	DELETE	Committee advisory duties.
26-18-701	DELETE	Definitions.
26-18-702	DELETE	Division and Department of Workforce Services compliance with adoption assistance interstate compact.
26-21-4	DELETE	Per diem and travel expenses of committee members.
26-21-5	DELETE	Duties of committee.
26-21-304	DELETE	Monitoring device Facility admission, patient discharge, and posted notice.
26-15-12	DELETE	Rules to implement statutes on smoking.
26-38-3.5	DELETE	Smoking ban exemption for Native American ceremony.
26-38-6	DELETE	Local ordinances.
26-38-7	DELETE	Enforcement action by proprietors.
26-38-8	DELETE	Penalties.
26-38-9	DELETE	Enforcement of chapter.
26-57-104	DELETE	Labeling of nicotine products containing nicotine.
62A-5a-101	DELETE	Policy statement.
62A-5a-102	DELETE	Definitions.
62A-5a-104	DELETE	Powers of council.
62A-5a-105	DELETE	Coordination of services for school-age children.
26-18-602	DELETE	Definitions.
26-33a-103	DELETE	Committee membership Terms Chair Compensation.
26-34-2	DELETE	Definition of death Determination of death.
26-15a-103	DELETE	Duties.
26-8a-204	DELETE	Disaster coordination plan.
26-8a-205	DELETE	Pediatric quality improvement program.
26-8a-206	DELETE	Personnel stress management program.
26-15-5.1	DELETE	Exemptions to food handler requirements.
26-15b-103	DELETE	Permitting Fees.
26-15b-104	DELETE	Permits.
26-15c-103	DELETE	Permitting Fees.
26-15c-104	DELETE	Safety and health inspections and permits. Definitions.
62A-18-102 62A-18-103	DELETE	Office of Quality and Design Creation.
62A-18-103 62A-18-104	DELETE	Director of the office Appointment Qualifications.
26-15a-107	DELETE DELETE	Dutiector of the office Appointment Qualifications. Duties.
26-21-205	DELETE	Department of Public Safety Retention of information Notification of Department of Health.
26-21-205	DELETE	No civil liability.
26-21-210	DELETE	Definitions.
26-60-102	DELETE	Enforcement.
26-80-104 26-21b-301	DELETE	Investigation and enforcement.
26-210-301	DELETE	Definitions.
20-03-101	DELETE	DETINITIONS.
26-61-102	DELETE	Definitions.
26-21b-102	DELETE	Definitions.

Current	NEW2 Section	Boldface
	DELETE	Definitions.
26-2-1	DELETE	Short title.
26-4-1	DELETE	Short title.
26-6-1	DELETE	Short title.
26-8a-101	DELETE	Title.
26-8b-101	DELETE	Title.
26-8b-601	DELETE	Title.
26-8c-101	DELETE	Title.
	DELETE	Short title.
	DELETE	Title. Title.
	DELETE DELETE	Title.
	DELETE	Title.
	DELETE	Reserved.
	DELETE	Title.
	DELETE	Definitions.
	DELETE	Short title.
	DELETE	Title.
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	DELETE	Definitions.
26-33a-101	DELETE	Short title.
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		Transition to single state agency Transition plan.
	DELETE	Definitions.
	DELETE	Intergenerational poverty mitigation reporting.
	DELETE	Title.
62A-4a-101.5	DELETE	Juvenile services.
	DELETE	Title.
	DELETE	Title.
		Title.
62A-11-701	DELETE	Title.

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62A-14-101	DELETE	Title.	
62A-15-101	DELETE	Title.	
62A-15-201	DELETE	Title.	
62A-16-101	DELETE	Title.	
62A-17-101	DELETE	Title.	
62A-18-101	DELETE	Title.	
26-50-102	DELETE	Definitions.	
26-47-102	DELETE	Prescription Drug Assistance Program.	
26-47-103	DELETE	Department to award grants for assistance to persons with bleeding disorders.	
26-26-1	DELETE	"Institution" defined.	
26-26-2	DELETE	Authorization for institutions to obtain impounded animals.	
26-26-4	DELETE	Institution to pay transportation expense Restrictions on use of animals Fee.	
26-26-5	DELETE	Records of animals required.	
26-26-6	DELETE	Revocation of authorization.	
26-26-7	DELETE	Adoption of rules by department Inspection and investigation of institutions.	
26B-1a-102	DELETE	Office of American Indian-Alaska Native Health and Family Services Creation Purpose.	
26B-1a-103	DELETE	Director of the office Appointment Qualifications Staff.	
26B-1a-101	DELETE	Definitions.	
26B-1a-107	DELETE	Liaison reporting.	
62A-5-206.8	DELETE	Management of the Utah State Developmental Center Sustainability Fund.	
26-60-105	DELETE?	Study by Public Utilities, Energy, and Technology Interim Committee and Health Reform Task Force.	
62A-5b-107		Annual "White Cane Safety Day" proclaimed.	
		Buildings and facilities to which chapter applies Standards available to interested parties Division of Facilities	
26-29-1		Construction and Management staff to advise, review, and approve plans when possible.	
26-29-2		Purpose of chapter.	
26-29-3		Basis for standards.	
26-29-4		Enforcement of chapter.	
26-45-102		Definitions.	
26-45-103		Restrictions on employers.	
26-45-104		Restrictions on health insurers.	
26-45-105		Private right of action.	
26-45-106		Enforcement.	
26-23a-2		Injury reporting requirements by health care provider Contents of report.	

HEALTH AND HUMAN SERVICES RECODIFICATION - ADMINISTRATION 1 AND RECOVERY SERVICES 2 3 LONG TITLE 4 **General Description:** 5 6 This bill recodifies portions of the Utah Health Code and Utah Human Services Code. 7 **Highlighted Provisions:** 8 This bill: 9 recodifies provisions regarding: 10 the Department of Health and Human Services; 11 licensing and certifications; and 12 recovery services and child support administration; and makes technical and corresponding changes. 13 14 Money Appropriated in this Bill: None 15 16 **Other Special Clauses:** 17 This bill contains revisor's instructions. List of sections affected: 18 19 AMENDS: 20 26B-1-102 21 26B-2-101 22 26B-9-101 23 **RENUMBERS AND AMENDS:** 24 26-1-10 26B-1-214 25 62A-1-115 26B-1-215 62A-18-105 26B-1-216 26 27 26-1-35 26B-1-217

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207	004 44 700 000 0 404
287	62A-11-703 26B-9-404
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289	Statutory text:
290	Chapter 1. Department of Health and Human Services.
291	
292	Part 1. General Provisions.
293	
294	26B-1-102. Definitions.
295	As used in this title:
296	(1) "Department" means the Department of Health and Human Services created in
297	Section 26B-1-201.
298	(2) "Executive director" means the executive director of the department appointed
299	under Section 26B-1-203.
300	[(2)] (3) "Stabilization services" means in-home services provided to a child with, or
301	who is at risk for, complex emotional and behavioral needs, including teaching the child's
302	parent or guardian skills to improve family functioning.
303	(4) "Local health department" means the same as that term is defined in Section
304	<u>26A-1-102.</u>
305	[(3)] <u>(5)</u> "Public health authority" means an agency or authority of the United States,
306	a state, a territory, a political subdivision of a state or territory, an Indian tribe, or a person
307	acting under a grant of authority from or a contract with such an agency, that is responsible
308	for public health matters as part of the agency or authority's official mandate.
309	[(4)] <u>(6)</u> "System of care" means a broad, flexible array of services and supports
310	that:
311	(a) serve a child with or who is at risk for complex emotional and behavioral needs;
312	(b) are community based;
313	(c) are informed about trauma;
314	(d) build meaningful partnerships with families and children;
315	(e) integrate service planning, service coordination, and management across state
316	and local entities;
317	(f) include individualized case planning;
318	(g) provide management and policy infrastructure that supports a coordinated network

319	of interdepartmental service providers, contractors, and service providers who are outside of
320	the department; and
321	(h) are guided by the type and variety of services needed by a child with or who is at
322	risk for complex emotional and behavioral needs and by the child's family.
323	
324	Part 2. Department of Health and Human Services.
325	
326	[26-1-10.] <u>26B-1-214.</u> Executive director Enforcement powers.
327	Subject to the restrictions in this title and to the extent permitted by state law, the
328	executive director is empowered to issue orders to enforce state laws and rules established
329	by the department except where the enforcement power is given to a committee created
330	under Section 26B-1-204.
331	
332	[62A-1-115.] <u>26B-1-215.</u> Actions on behalf of department Party in interest.
333	(1) The executive director, each of the department's boards, divisions, offices, and
334	the director of each division or office, shall, in the exercise of any power, duty, or function
335	under any statute of this state, is considered to be acting on behalf of the department.
336	(2) The department, through the executive director or through any of the
337	department's boards, divisions, offices, or directors, shall be considered the party in interest
338	in all actions at law or in equity, where the department or any constituent, board, division,
339	office, or official thereof is authorized by any statute of the state to be a party to any legal
340	action.
341	
342	[62A-18-105.] <u>26B-1-216.</u> Powers and duties of the [office] <u>department</u>
343	Quality and design .
344	The [office] department shall:
345	(1) monitor and evaluate the quality of services provided by the department including
346	(a) in accordance with Title 62A, Chapter 16, Fatality Review Act, monitoring,
347	reviewing, and making recommendations relating to a fatality review;
348	(b) overseeing the duties of the child protection ombudsman appointed under Section
349	80-2-1104; and

(c) conducting internal evaluations of the quality of services provided by the

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351	department and service providers contracted with the department;
352	(2) conduct investigations described in Section 80-2-703; and
353	(3) [assist the department in developing] develop an integrated human services
354	system and implementing a system of care by:
355	(a) designing and implementing a comprehensive continuum of services for
356	individuals who receive services from the department or a service provider contracted with
357	the department;
358	(b) establishing and maintaining department contracts with public and private service
359	providers;
360	(c) establishing standards for the use of service providers who contract with the
361	department;
362	(d) coordinating a service provider network to be used within the department to
363	ensure individuals receive the appropriate type of services;
364	(e) centralizing the department's administrative operations; and
365	(f) integrating, analyzing, and applying department-wide data and research to monitor
366	the quality, effectiveness, and outcomes of services provided by the department.
367	
368	[26-1-35.] <u>26B-1-217.</u> Content and form of certificates and reports.
369	(1) Certificates, certifications, forms, reports, other documents and records, and the
370	form of communication between persons required by this title shall be prepared in the form
371	prescribed by department rule.
372	(2) Certificates, certifications, forms, reports, or other documents and records, and
373	communications between persons required by this title may be signed, filed, verified,
374	registered, and stored by photographic, electronic, or other means as prescribed by
375	department rule.
376	
377	[26-1-44.] <u>26B-1-218.</u> Intergenerational poverty mitigation reporting.
378	(1) As used in this section:
379	(a) "Cycle of poverty" means the same as that term is defined in Section 35A-9-102.
380	(b) "Intergenerational poverty" means the same as that term is defined in Section

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35A-9-102.

(2) On or before October 1 of each year, the department shall provide an annual

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383	report to the Department of Workforce Services for inclusion in the intergenerational poverty
384	report described in Section 35A-9-202.
385	(3) The report shall:
386	(a) describe policies, procedures, and programs that the department has
387	implemented or modified to help break the cycle of poverty and end welfare dependency for
388	children in the state affected by intergenerational poverty; and
389	(b) contain recommendations to the Legislature on how to address issues relating to
390	breaking the cycle of poverty and ending welfare dependency for children in the state
391	affected by intergenerational poverty.
392	
393	[26-1-45.] <u>26B-1-219.</u> Requirements for issuing, recommending, or facilitating
394	rationing criteria.
395	(1) As used in this section:
396	(a) "Health care resource" means:
397	(i) health care as defined in Section 78B-3-403;
398	(ii) a prescription drug as defined in Section 58-17b-102;
399	(iii) a prescription device as defined in Section 58-17b-102;
400	(iv) a nonprescription drug as defined in Section 58-17b-102; or
401	(v) any supply or treatment that is intended for use in the course of providing health
402	care as defined in Section 78B-3-403.
403	(b) (i) "Rationing criteria" means any requirement, guideline, process, or
404	recommendation regarding:
405	(A) the distribution of a scarce health care resource; or
406	(B) qualifications or criteria for a person to receive a scarce health care resource.
407	(ii) "Rationing criteria" includes crisis standards of care with respect to any health care
408	resource.
409	(c) "Scarce health care resource" means a health care resource:
410	(i) for which the need for the health care resource in the state or region significantly
411	exceeds the available supply of that health care resource in that state or region;
412	(ii) that, based on the circumstances described in Subsection (1)(c)(i), is distributed or

provided using written requirements, guidelines, processes, or recommendations as a factor

in the decision to distribute or provide the health care resource; and

413

- 415 (iii) that the federal government has allocated to the state to distribute.
- 416 (2) (a) On or before July 1, 2022, the department shall make rules in accordance with 417 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a procedure that the 418 department will follow to adopt, modify, require, facilitate, or recommend rationing criteria.
- (b) Beginning July 1, 2022, the department may not adopt, modify, require, facilitate, or recommend rationing criteria unless the department follows the procedure established by the department under Subsection (2)(a).
- 422 (3) The procedures developed by the department under Subsection (2) shall include, 423 at a minimum:
- 424 (a) a requirement that the department notify the following individuals in writing before 425 rationing criteria are issued, are recommended, or take effect:
 - (i) the Administrative Rules Review Committee created in Section 63G-3-501;
- 427 (ii) the governor or the governor's designee;

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- (iii) the president of the Senate or the president's designee;
- (iv) the speaker of the House of Representatives or the speaker's designee;
- (v) the executive director or the executive director's designee; and
- 431 (vi) if rationing criteria affect hospitals in the state, a representative of an association 432 representing hospitals throughout the state, as designated by the executive director; and
 - (b) procedures for an emergency circumstance which shall include, at a minimum:
 - (i) a description of the circumstances under which emergency procedures described in this Subsection (3)(b) may be used; and
- (ii) a requirement that the department notify the individuals described in Subsections (3)(a)(i) through (vi) as soon as practicable, but no later than 48 hours after the rationing criteria take effect.
 - (4) (a) Within 30 days after March 22, 2022, the department shall send to the Administrative Rules Review Committee all rationing criteria that:
- 441 (i) were adopted, modified, required, facilitated, or recommended by the department 442 prior to March 22, 2022; and
- 443 (ii) on March 22, 2022, were in effect and in use to distribute or qualify a person to receive scarce health care resources.
- (b) During the 2022 interim, the Administrative Rules Review Committee shall, under Subsection 63G-3-501(3)(d)(i), review each of the rationing criteria submitted by the

- department under Subsection (4)(a). 447 (5) The requirements described in this section and rules made under this section shall 448 449 apply regardless of whether rationing criteria: (a) have the force and effect of law, or is solely advisory, informative, or descriptive: 450 451 (b) are carried out or implemented directly or indirectly by the department or by other 452 individuals or entities; or 453 (c) are developed solely by the department or in collaboration with other individuals or 454 entities. (6) This section: 455 456 (a) may not be suspended under Section 53-2a-209 or any other provision of state 457 law relating to a state of emergency; 458 (b) does not limit a private entity from developing or implementing rationing criteria: 459 and 460 (c) does not require the department to adopt, modify, require, facilitate, or 461 recommend rationing criteria that the department does not determine to be necessary or 462 appropriate. 463 (7) Subsection (2) does not apply to rationing criteria that are adopted, modified, 464 required, facilitated, or recommended by the department: 465 (a) through the regular, non-emergency rulemaking procedure described in Section 63G-3-301: 466 (b) if the modification is solely to correct a technical error in rationing criteria such as 467 468 correcting obvious errors and inconsistencies including those involving punctuation,
- (c) to the extent that compliance with this section would result in a direct violation of federal law;
 - (d) that are necessary for administration of the Medicaid program;

capitalization, cross references, numbering, and wording;

- 473 (e) if state law explicitly authorizes the department to engage in rulemaking to 474 establish rationing criteria; or
- 475 (f) if rationing criteria are authorized directly through a general appropriation bill that is 476 validly enacted.

478 [26-23-1.] 26B-1-220. Legal advice and representation for department.

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- (1) The attorney general shall be the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them. The county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil action requested by the executive director to abate a condition which exists in violation of the public health laws or standards, orders, and rules of the department as provided in Section 26-23-6.
- (2) The district attorney or county attorney having criminal jurisdiction shall prosecute for the violation of the public health laws or standards, orders, and rules of the department as provided in Section 26-23-6.
- (3) If the county attorney or district attorney fails to act, the executive director may bring any such action and shall be represented by the attorney general or, with the approval of the attorney general, by special counsel.

[26-23-2.] <u>26B-1-221.</u> Administrative review of actions of department or director.

Any person aggrieved by any action or inaction of the department or its executive director may request an adjudicative proceeding by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

498 [26-23-3.] <u>26B-1-222.</u> Violation of public health laws or orders unlawful.

It shall be unlawful for any person, association, or corporation, and the officers thereof:

- (1) to willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule, or regulation issued thereunder; or
- (2) to fail to remove or abate from private property under the person's control at [his] the person's own expense, within 48 hours, or such other reasonable time as the health authorities shall determine, after being ordered to do so by the health authorities, any nuisance, source of filth, cause of sickness, dead animal, health hazard, or sanitation violation within the jurisdiction and control of the department, whether the person, association, or corporation shall be the owner, tenant, or occupant of such property; provided, however, when any such condition is due to an act of God, it shall be removed at public expense; or

- (3) to pay, give, present, or otherwise convey to any officer or employee of the department any gift, remuneration or other consideration, directly or indirectly, which such officer or employee is forbidden to receive by the provisions of this chapter;
- (4) to fail to make or file reports required by law or rule of the department relating to the existence of disease or other facts and statistics relating to the public health.

[26-23-4.] <u>26B-1-223.</u> Unlawful acts by department officers and employees.

It shall be unlawful for any officer or employee of the department:

- (1) [To] to accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon [him] the officer or employee by or in behalf of the department or by the provisions of this chapter[-]; or
- (2) [To] to perform any work, labor, or services other than the duties assigned to [him] the officer or employee on behalf of the department during the hours such officer or employee is regularly employed by the department, or to perform [his] the officer or employee's duties as an officer or employee of the department under any condition or arrangement that involves a violation of this or any other law of the state.

[26-23-6.] <u>26B-1-224.</u> Criminal and civil penalties and liability for violations.

- (1) (a) Any person, association, corporation, or an officer of a person, an association, or a corporation, who violates any provision of this chapter or lawful orders of the department or a local health department in a criminal proceeding is guilty of a class B misdemeanor for the first violation, and for any subsequent similar violation within two years, is guilty of a class A misdemeanor, except this section does not establish the criminal penalty for a violation of Section 26-23-5.5 or Section 26-8a-502.1.
- (b) Conviction in a criminal proceeding does not preclude the department or a local health department from assessment of any civil penalty, administrative civil money penalty or to deny, revoke, condition, or refuse to renew a permit, license, or certificate or to seek other injunctive or equitable remedies.
- (2) (a) Subject to Subsections (2)(c) and (d), any association, corporation, or an officer of an association or a corporation, who violates any provision of this title or lawful orders of the department or a local health department, or rules adopted under this title by the department:

- (i) may be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of 543 544 \$5,000 per violation; or
- (ii) may be assessed, in an administrative action in accordance with Title 63G, 545 Chapter 4, Administrative Procedures Act, or similar procedures adopted by local or county 546 547 government, a penalty not to exceed the sum of \$5,000 per violation.
 - (b) Subject to Subsections (2)(c) and (d), an individual who violates any provision of this title or lawful orders of the department or a local health department, or rules adopted under this title by the department:
- 551 (i) may be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of 552 \$150 per violation; or
 - (ii) may be assessed, in an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act, or similar procedures adopted by local or county government, a penalty not to exceed the sum of \$150 per violation.
 - (c) (i) Except as provided in Subsection (2)(c)(ii), a penalty described in Subsection (2)(a) or (b) may only be assessed against the same individual, association, or corporation one time in a calendar week.
 - (ii) Notwithstanding Subsection (2)(c)(i), an individual, an association, a corporation, or an officer of an association or a corporation, who willfully disregards or recklessly violates a provision of this title or lawful orders of the department or a local health department, or rules adopted under this title by the department, may be assessed a penalty as described in Subsection (2)(a) for each day of violation if it is determined that the violation is likely to result in a serious threat to public health.
 - (d) Upon reasonable cause shown in judicial civil proceeding or an administrative action, a penalty imposed under this Subsection (2) may be waived or reduced.
 - (3) Assessment of any civil penalty or administrative penalty does not preclude the department or a local health department from seeking criminal penalties or to deny, revoke, impose conditions on, or refuse to renew a permit, license, or certificate or to seek other injunctive or equitable remedies.
 - (4) In addition to any penalties imposed under Subsection (1), a person, association, corporation, or an officer of a person, an association, or a corporation, is liable for any expense incurred by the department in removing or abating any health or sanitation violations, including any nuisance, source of filth, cause of sickness, or dead animal.

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575	[26-23-7.] <u>26B-1-225.</u> Application of enforcement procedures and penalties.
576	Enforcement procedures and penalties provided in this chapter do not apply to other
577	chapters in this title which provide for specific enforcement procedures and penalties.
578	
579	[26-23-8.] <u>26B-1-226.</u> Representatives of department authorized to enter
580	regulated premises.
581	(1) Authorized representatives of the department upon presentation of appropriate
582	identification shall be authorized to enter upon the premises of properties regulated under
583	this title to perform routine inspections to insure compliance with rules adopted by the
584	department.
585	(2) This section does not authorize the department to inspect private dwellings.
586	
587	[26-23-9.] <u>26B-1-227.</u> Authority of department as to functions transferred from
588	other agencies.
589	(1) (a) If functions transferred from other agencies are vested by this code in the
590	department, the department shall be the successor in every way, with respect to such
591	functions, except as otherwise provided by this code.
592	(b) Every act done in the exercise of such functions by the department shall have the
593	same force and effect as if done by the agency in which the functions were previously
594	vested.
595	(2) Whenever any such agency is referred to or designated by law, contract, or other
596	document, the reference or designation shall apply to the department.
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598	[26-23-10.] <u>26B-1-228.</u> Religious exemptions from code Regulation of
599	state-licensed healing system practice unaffected by code.
600	(1) (a) Except as provided in Subsection (1)(b), nothing in this code shall be
601	construed to compel any person to submit to any medical or dental examination or treatment
602	under the authority of this code when such person, or the parent or guardian of any such
603	person objects to such examination or treatment on religious grounds, or to permit any
604	discrimination against such person on account of such objection.
605	(b) An exemption from medical or dental examination, described in Subsection (1)(a),

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may not be granted if the executive director has reasonable cause to suspect a substantial

607 menace to the health of other persons exposed to contact with the unexamined person.

- 608 (2) Nothing in this code shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any home or institution conducted 609 for those who rely upon treatment by prayer or spiritual means in accordance with the creed 610 or tenets of any well recognized church or religious denomination, provided the statutes and 612 regulations on sanitation are complied with.
- (3) Nothing in this code shall be construed or used to amend any statute now in force 613 pertaining to the scope of practice of any state-licensed healing system. 614

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[26-25-1.] 26B-1-229. Authority to provide data on treatment and condition of persons to designated agencies -- Immunity from liability.

- (1) As used in this section: 618
- 619 (a) "Health care provider" means the same as that term is defined in Section
- 78B-3-403. 620
- 621 (b) "Health care facility" means the same as that term is defined in Section
- 26B-2-201. 622
- (4) (2) Any person, health facility, or other organization may, without incurring 623
- liability, provide the following information to the persons and entities described in Subsection 624
- 625 [(2)] (3):
- 626 (a) information as determined by the state registrar of vital records appointed under
- 627 [Title 26, Chapter 2, Utah Vital Statistics Act] Chapter 6, Part X, Vital Statistics;
- (b) interviews; 628
- 629 (c) reports;
- 630 (d) statements;
- 631 (e) memoranda;
- 632 (f) familial information; and
- 633 (g) other data relating to the condition and treatment of any person.
- (2) (3) The information described in Subsection (4) (2) may be provided to: 634
- (a) the department and local health departments; 635
- (b) the Division of Integrated Healthcare within the [Department of Health and Human 636
- 637 Services department;
- (c) scientific and health care research organizations affiliated with institutions of 638

639	higher education;	
640	(d) the Utah Medical Association or any of its allied medical societies;	
641	(e) peer review committees;	
642	(f) professional review organizations;	
643	(g) professional societies and associations; and	
644	(h) any health facility's in-house staff committee for the uses described in Subsection	
645	[(3)] <u>(4)</u> .	
646	[(3)] <u>(4)</u> The information described in Subsection [(1)] <u>(2)</u> may be provided for the	
647	following purposes:	
648	(a) study and advancing medical research, with the purpose of reducing the incidence	
649	of disease, morbidity, or mortality; or	
650	(b) the evaluation and improvement of hospital and health care rendered by hospitals,	
651	health facilities, or health care providers.	
652	[(4)] <u>(5)</u> Any person may, without incurring liability, provide information, interviews,	
653	reports, statements, memoranda, or other information relating to the ethical conduct of any	
654	health care provider to peer review committees, professional societies and associations, or	
655	any in-hospital staff committee to be used for purposes of intraprofessional society or	
656	association discipline.	
657	[(5)] (6) No liability may arise against any person or organization as a result of:	
658	(a) providing information or material authorized in this section;	
659	(b) releasing or publishing findings and conclusions of groups referred to in this	
660	section to advance health research and health education; or	
661	(c) releasing or publishing a summary of these studies in accordance with this	
662	chapter.	
663	[(6) As used in this chapter:	
664	(a) "health care provider" has the meaning set forth in Section 78B-3-403; and	
665	(b) "health care facility" has the meaning set forth in Section 26-21-2.]	
666		
667	[26-68-102.] <u>26B-1-230.</u> Governmental entities prohibited from requiring a	
668	COVID-19 vaccine.	
669	(1) As used in this section:	
670	(a) "Governmental entity" means the same as that term is defined in Section	

63D-2-102. 671 (b) "Emergency COVID-19 vaccine" means a substance that is: 672 (i) authorized for use by the United States Food and Drug Administration under an 673 emergency use authorization under 21 U.S.C. Sec. 360bbb-3; 674 (ii) injected into or otherwise administered to an individual; and 675 (iii) intended to immunize an individual against COVID-19 as defined in Section 676 78B-4-517. 677 (2) Except as provided in Subsection (4), a governmental entity may not require. 678 directly or indirectly, that an individual receive an emergency COVID-19 vaccine. 679 680 (3) The prohibited activities under Subsection (2) include: 681 (a) making rules that require, directly or indirectly, that an individual receive an 682 emergency COVID-19 vaccine; 683 (b) requiring that an individual receive an emergency COVID-19 vaccine as a 684 condition of: 685 (i) employment; 686 (ii) participation in an activity of the governmental entity, including outside or 687 extracurricular activities; or 688 (iii) attendance at events that are hosted or sponsored by the governmental entity; 689 and (c) any action that a reasonable person would not be able to deny without significant 690 691 harm to the individual. 692 (4) Subsection (2) does not include: (a) facilitating the distribution, dispensing, administration, coordination, or provision of 693 694 an emergency COVID-19 vaccine; (b) an employee of a governmental entity who is: 695 (i) acting in a public health or medical setting; and 696 (ii) required to receive vaccinations in order to perform the employee's assigned 697 duties and responsibilities; or 698 (c) enforcement by a governmental entity of a non-discretionary requirement under 699 federal law. 700

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executive officer under Title 53, Chapter 2a, Emergency Management Act.

(5) This section may not be suspended or modified by the governor or any other chief

703	[26B-1a-104.] <u>26B-1-231.</u> <u>Office of American Indian-Alaska Native Health and</u>
704	<u>Family Services Creation Purpose</u> Duties [of the office].
705	(1) (a) "Director" means the director of the office appointed under Subsection (3).
706	(b) "Office" means the Office of American Indian-Alaska Native Health and Family
707	Services created in Subsection (2).
708	(2) There is created within the department the Office of American Indian-Alaska
709	Native Health and Family Services.
710	(3) The executive director shall appoint a director of the office who:
711	(a) has a bachelor's degree from an accredited university or college;
712	(b) is experienced in administration; and
713	(c) is knowledgeable about the areas of American Indian-Alaska Native practices.
714	(4) (a) The director is the administrative head of the office and shall serve under the
715	supervision of the executive director.
716	(b) The executive director may hire staff as necessary to carry out the duties of the
717	office described in Section 26B-1a-104.
718	(5) (a) The purpose of the office is to oversee and coordinate department services for
719	Utah's American Indian-Alaska Native populations.
720	(b) The office shall:
721	[(1)] <u>(i)</u> oversee and coordinate department services for Utah's American
722	Indian-Alaska Native populations;
723	[(2)] (ii) conduct regular and meaningful consultation with Indian tribes when there is
724	a proposed department action that has an impact on an Indian tribe as a sovereign entity;
725	[(3)] (iii) monitor agreements between the department and Utah's American
726	Indian-Alaska Native populations; and
727	[(4)] <u>(iv)</u> oversee the health liaison <u>appointed under Section 26B-1-232</u> and ICWA
728	liaison appointed under Section 26B-1-233.
729	
730	[26B-1a-105.] <u>26B-1-232.</u> American Indian-Alaska Native Health Liaison
731	Appointment Duties.
732	(1) (a) "Director" means the director of the Office of American Indian-Alaska Native
733	Health and Family Services appointed under Section 26B-1-231.
734	(b) "Health care" means care treatment service or a procedure to improve maintain

735	diagnose, or otherwise affect an individual's physical or mental condition.		
736	(c) "Health liaison" means the American Indian-Alaska Native Health Liaison		
737	appointed under Subsection (2).		
738	[(1)] (2) (a) The executive director shall appoint an individual as the American		
739	Indian-Alaska Native Health Liaison.		
740	(b) The health liaison shall serve under the supervision of the director.		
741	[(2)] <u>(3)</u> The health liaison shall:		
742	(a) promote and coordinate collaborative efforts between the department and Utah		
743	American Indian-Alaska Native population to improve the availability and accessibility of		
744	quality health care impacting Utah's American Indian-Alaska Native populations on and off		
745	reservations;		
746	(b) interact with the following to improve health disparities for Utah's American		
747	Indian-Alaska Native populations:		
748	(i) tribal health programs;		
749	(ii) local health departments;		
750	(iii) state agencies and officials; and		
751	(iv) providers of health care in the private sector;		
752	(c) facilitate education, training, and technical assistance regarding public health and		
753	medical assistance programs to Utah's American Indian-Alaska Native populations; and		
754	(d) staff an advisory board by which Utah's tribes may consult with state and local		
755	agencies for the development and improvement of public health programs designed to		
756	address improved health care for Utah's American Indian-Alaska Native populations on and		
757	off the reservation.		
758	(4) The health liaison shall annually report the liaison's activities and		
759	accomplishments to the Native American Legislative Liaison Committee created in Section		
760	<u>36-22-1.</u>		
761			
762	[26B-1a-106.] <u>26B-1-233.</u> Indian Child Welfare Act Liaison Appointment		
763	Qualifications Duties.		
764	(1) As used in this section:		
765	(a) "Director" means the director of the Office of American Indian-Alaska Native		
766	Health and Family Services appointed under Section 26B-1-231		

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767	(b) "ICWA liaison" means the Indian Child Welfare Act Liaison appointed under
768	Subsection (2).
769	[(1)] (2) (a) The executive director shall appoint an individual as the Indian Child
770	Welfare Act Liaison who:
771	(i) has a bachelor's degree from an accredited university or college; and
772	(ii) is knowledgeable about the areas of child and family services and Indian tribal
773	child rearing practices.
774	(b) The ICWA liaison shall serve under the supervision of the director.
775	[(2)] <u>(3)</u> The ICWA liaison shall:
776	(a) act as a liaison between the department and Utah's American Indian populations
777	regarding child and family services;
778	(b) provide training to department employees regarding the requirements and
779	implementation of the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963;
780	(c) develop and facilitate education and technical assistance programs for Utah's
781	American Indian populations regarding available child and family services;
782	(d) promote and coordinate collaborative efforts between the department and Utah's
783	American Indian population to improve the availability and accessibility of quality child and
784	family services for Utah's American Indian populations; and
785	(e) interact with the following to improve delivery and accessibility of child and family
786	services for Utah's American Indian populations:
787	(i) state agencies and officials; and
788	(ii) providers of child and family services in the public and private sector.
789	(4) The ICWA liaison shall annually report the liaison's activities and
790	accomplishments to the Native American Legislative Liaison Committee created in Section
791	<u>36-22-1.</u>
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793	[62A-1-122.] <u>26B-1-234.</u> [Child pornography] <u>Handling of child sexual abuse</u>
794	material
795	(1) As used in this section:
796	(a) "Child [pornography] sexual abuse material" means [the same as that term is]

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child pornography as defined in Section 76-5b-103.

(b) "Secure" means to prevent and prohibit access, electronic upload, transmission,

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799 or transfer of an image.

- (2) The department or a division within the department may not retain child [pornography] sexual abuse material longer than is necessary to comply with the requirements of this section.
- (3) When the department or a division within the department obtains child [pornography] sexual abuse material as a result of an employee unlawfully viewing child [pornography] sexual abuse material, the department or division shall consult with and follow the guidance of the Division of Human Resource Management regarding personnel action and local law enforcement regarding retention of the child [pornography] sexual abuse material.
- (4) When the department or a division within the department obtains child [pornography] sexual abuse material as a result of a report or an investigation, the department or division shall immediately secure the child [pornography] sexual abuse material, or the electronic device if the child [pornography] sexual abuse material is digital, and contact the law enforcement office that has jurisdiction over the area where the division's case is located.

[62A-4a-211.] <u>26B-1-235.</u> [Division] <u>Department</u> responsibilities -- Normalizing lives of children.

- (1) A child who comes into care [under this chapter] of the department is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.
- (2) The [division] department shall make efforts to normalize the lives of children in the [division's] department's custody and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of the [division] department.
- (3) The [division] department shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

[26-26-3.] <u>26B-1-236.</u> Experimental Animals -- Authorization -- Minimum period of impoundment -- [Efforts required to contact owner and to make animal

831	available Prerogative of person voluntarily providing animal] Requirements Fees
832	Records Revocation Rulemaking and Investigation .
833	(1) As used in this section, "institution" means any school or college of agriculture,
834	veterinary medicine, medicine, pharmacy, dentistry or other educational, hospital or scientific
835	establishment properly concerned with the investigation of or instruction concerning the
836	structure or functions of living organisms, the cause, prevention, control or cure of diseases
837	or abnormal condition of human beings or animals.
838	(2) (a) Institutions may apply to the department for authorization to obtain animals
839	from establishments maintained for the impounding, care and disposal of animals seized by
840	lawful authority.
841	(b) If, after an investigation under Subsection (2)(a), the department finds that the
842	institution meets the requirements of this chapter and its rules and that the public interest will
843	be served thereby, it may authorize the institution to obtain animals under this chapter.
844	[(1)] (3) Subject to Subsection [(2)] (4), the governing body of the county or
845	municipality in which an establishment is located may make available to an authorized
846	institution as many impounded animals in that establishment as the institution may request.
847	[(2)] <u>(4)</u> A governing body described in Subsection [(1)] <u>(3)</u> may not make an
848	impounded animal available to an institution, unless:
849	(a) the animal has been legally impounded for the longer of:
850	(i) at least five days; or
851	(ii) the minimum period provided for by local ordinance;
852	(b) the animal has not been claimed or redeemed by:
853	(i) the animal's owner; or
854	(ii) any other person entitled to claim or redeem the animal; and
855	(c) the establishment has made a reasonable effort to:
856	(i) find the rightful owner of the animal, including checking if the animal has a tag or
857	microchip; and
858	(ii) if the owner is not found, make the animal available to others during the impound
859	period.
860	(4) Owners of animals who voluntarily provide their animals to an establishment may,
861	by signature, determine whether or not the animal may be provided to an institution or used
862	for research or educational nurnoses

863	(5) The authorized institution shall provide, at its own expense, for the transportation
864	of such animals from the establishment to the institution and shall use them only in the
865	conduct of scientific and educational activities and for no other purpose.
866	(6) (a) The institution shall reimburse the establishment for animals received.
867	(b) The fee described in Subsection (6)(a) shall be, at a minimum, \$15 for cats and
868	\$20 for dogs.
869	(c) The fee described in Subsection (6)(a) shall be increased as determined by the
870	department, based on fluctuations or changes in the Consumer Price Index.
871	(7) Each institution shall keep a public record of all animals received and disposed of
872	(8) The department upon 15 days written notice and an opportunity to be heard, may
873	revoke an institution's authorization if the institution has violated any provision of this chapter
874	or has failed to comply with the conditions required by the department in respect to the
875	issuance of authorization.
876	(9) In carrying out the provisions of this chapter, the department may adopt rules for:
877	(a) controlling the humane use of animals;
878	(b) diagnosis and treatment of human and animal diseases;
879	(c) advancement of veterinary, dental, medical, and biological sciences; and
880	(d) testing, improvement, and standardization of laboratory specimens, biologic
881	projects, pharmaceuticals, and drugs.
882	(10) The department may inspect or investigate any institution that applies for or is
883	authorized to obtain animals.
884	
885	[26-18-605.] <u>26B-1-237.</u> Utah Office of Internal Audit.
886	(1) There is created the Utah Office of Internal Audit.
887	(2) The Utah Office of Internal Audit:
888	[(1)] (a) may not be placed within the division;
889	[(2)] (b) shall be placed directly under, and report directly to, the executive director [of
890	the Department of Health]; and
891	[(3)] (c) shall have full access to all records of the division.
892	
893	[26-10-8.] <u>26B-1-238.</u> Request for proposal required for non-state supplied
894	services.

- (1) Funds provided to the department through Sections 51-9-201 and 59-14-204 to be used to provide services, shall be awarded to non-governmental entities based on a competitive process consistent with Title 63G, Chapter 6a, Utah Procurement Code.
- (2) Beginning July 1, 2010, and not more than every five years thereafter, the department shall issue requests for proposals for new or renewing contracts to award funding for programs under Subsection (1).

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Part 3. Funds and Accounts.

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[26-8a-108.] 26B-1-306. Emergency Medical Services System Account.

- (1) There is created within the General Fund a restricted account known as the Emergency Medical Services System Account.
 - (2) The account consists of:
 - (a) interest earned on the account;
 - (b) appropriations made by the Legislature; and
- 910 (c) contributions deposited into the account in accordance with Section 41-1a-230.7.
- 911 (3) The department shall use:
- 912 (a) an amount equal to 25% of the money in the account for administrative costs 913 related to this chapter;
 - (b) an amount equal to 75% of the money in the account for grants awarded in accordance with Subsection 26-8a-207(3); and
 - (c) all money received from the revenue source in Subsection (2)(c) for grants awarded in accordance with Subsection 26-8a-207(3).

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[26-8b-602.] <u>26B-1-307.</u> Automatic External Defibrillator Restricted Account.

- (1) (a) There is created a restricted account within the General Fund known as the Automatic External Defibrillator Restricted Account to provide AEDs to entities under Subsection (4).
- (b) The director of the bureau shall administer the account in accordance with rules
 made by the bureau in accordance with Title 63G, Chapter 3, Utah Administrative
 Rulemaking Act.
- 926 (2) The restricted account shall consist of money appropriated to the account by the

Legislature. 927 928 (3) The director of the bureau shall distribute funds deposited in the account to 929 eligible entities, under Subsection (4), for the purpose of purchasing: 930 (a) an AED: 931 (b) an AED carrying case; 932 (c) a wall-mounted AED cabinet; or 933 (d) an AED sign. 934 (4) Upon appropriation, the director of the bureau shall distribute funds deposited in 935 the account, for the purpose of purchasing items under Subsection (3), to: 936 (a) a municipal department of safety that routinely responds to incidents, or potential 937 incidents, of sudden cardiac arrest; 938 (b) a municipal or county law enforcement agency that routinely responds to 939 incidents, or potential incidents, of sudden cardiac arrest; 940 (c) a state law enforcement agency that routinely responds to incidents, or potential 941 incidents, of sudden cardiac arrest; 942 (d) a school that offers instruction to grades kindergarten through 6: 943 (e) a school that offers instruction to grades 7 through 12; or 944 (f) a state institution of higher education. 945 (5) The director of the bureau shall distribute funds under this section to a municipality only if the municipality provides a match in funding for the total cost of items 946 947 under Subsection (3): 948 (a) of 50% for the municipality, if the municipality is a city of first, second, or third class under Section 10-2-301; or 949 (b) of 75% for the municipality, other than a municipality described in Subsection 950 951 (5)(a). (6) The director of the bureau shall distribute funds under this section to a county only 952 if the county provides a match in funding for the total cost of items under Subsection (3): 953 (a) of 50% for the county, if the county is a county of first, second, or third class under 954 Section 17-50-501; or 955 956 (b) of 75% for the county, other than a county described in Subsection (6)(a).

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(4) may apply to the director of the bureau to receive a distribution of funds from the account

(7) In accordance with rules made by the bureau, an entity described in Subsection

959	by filing an application with the bureau on or before October 1 of each year.
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961	[26-9-4.] <u>26B-1-308.</u> Rural Health Care Facilities Account Source of revenues
962	Interest Distribution of revenues Expenditure of revenues Unexpended
963	revenues lapse into the General Fund.
964	(1) As used in this section:
965	(a) "Emergency medical services" is as defined in Section 26-8a-102.
966	(b) "Federally qualified health center" is as defined in 42 U.S.C. Sec. 1395x.
967	(c) "Fiscal year" means a one-year period beginning on July 1 of each year.
968	(d) "Freestanding urgent care center" is as defined in Section 59-12-801.
969	(e) "Nursing care facility" is as defined in Section 26-21-2.
970	(f) "Rural city hospital" is as defined in Section 59-12-801.
971	(g) "Rural county health care facility" is as defined in Section 59-12-801.
972	(h) "Rural county hospital" is as defined in Section 59-12-801.
973	(i) "Rural county nursing care facility" is as defined in Section 59-12-801.
974	(j) "Rural emergency medical services" is as defined in Section 59-12-801.
975	(k) "Rural health clinic" is as defined in 42 U.S.C. Sec. 1395x.
976	(2) There is created a restricted account within the General Fund known as the
977	["]Rural Health Care Facilities Account.["]
978	(3) (a) The restricted account shall be funded by amounts appropriated by the
979	Legislature.
980	(b) Any interest earned on the restricted account shall be deposited into the General
981	Fund.
982	(4) Subject to Subsections (5) and (6), the State Tax Commission shall for a fiscal
983	year distribute money deposited into the restricted account to each:
984	(a) county legislative body of a county that, on January 1, 2007, imposes a tax in
985	accordance with Section 59-12-802 and has not repealed the tax; or
986	(b) city legislative body of a city that, on January 1, 2007, imposes a tax in
987	accordance with Section 59-12-804 and has not repealed the tax.
988	(5) (a) Subject to Subsection (6), for purposes of the distribution required by
989	Subsection (4), the State Tax Commission shall:
990	(i) estimate for each county and city described in Subsection (4) the amount by which

the revenues collected from the taxes imposed under Sections 59-12-802 and 59-12-804 for fiscal year 2005-06 would have been reduced had:

- 993 (A) the amendments made by Laws of Utah 2007, Chapter 288, Sections 25 and 26, 994 to Sections 59-12-802 and 59-12-804 been in effect for fiscal year 2005-06; and
- 995 (B) each county and city described in Subsection (4) imposed the tax under Sections 996 59-12-802 and 59-12-804 for the entire fiscal year 2005-06;
 - (ii) (A) for fiscal years ending before fiscal year 2018, calculate a percentage for each county and city described in Subsection (4) by dividing the amount estimated for each county and city in accordance with Subsection (5)(a)(i) by \$555,000; and
 - (B) beginning in fiscal year 2018, calculate a percentage for each county and city described in Subsection (4) by dividing the amount estimated for each county and city in accordance with Subsection (5)(a)(i) by \$218,809.33;
- 1003 (iii) distribute to each county and city described in Subsection (4) an amount equal to the product of:
 - (A) the percentage calculated in accordance with Subsection (5)(a)(ii); and
- 1006 (B) the amount appropriated by the Legislature to the restricted account for the fiscal 1007 year.
- 1008 (b) The State Tax Commission shall make the estimations, calculations, and
 1009 distributions required by Subsection (5)(a) on the basis of data collected by the State Tax
 1010 Commission.
 - (6) If a county legislative body repeals a tax imposed under Section 59-12-802 or a city legislative body repeals a tax imposed under Section 59-12-804:
- 1013 (a) the commission shall determine in accordance with Subsection (5) the distribution 1014 that, but for this Subsection (6), the county legislative body or city legislative body would 1015 receive; and
- 1016 (b) after making the determination required by Subsection (6)(a), the commission shall:
- 1018 (i) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 1019 59-12-804 is October 1:
- 1020 (A) (I) distribute to the county legislative body or city legislative body 25% of the distribution determined in accordance with Subsection (6)(a); and
 - (II) deposit 75% of the distribution determined in accordance with Subsection (6)(a)

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- 1024 (B) beginning with the first fiscal year after the effective date of the repeal and for each subsequent fiscal year, deposit the entire amount of the distribution determined in 1025 1026 accordance with Subsection (6)(a) into the General Fund:
- 1027 (ii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is January 1: 1028
- 1029 (A) (I) distribute to the county legislative body or city legislative body 50% of the distribution determined in accordance with Subsection (6)(a); and 1030
- 1031 (II) deposit 50% of the distribution determined in accordance with Subsection (6)(a) 1032 into the General Fund; and
 - (B) beginning with the first fiscal year after the effective date of the repeal and for each subsequent fiscal year, deposit the entire amount of the distribution determined in accordance with Subsection (6)(a) into the General Fund;
- 1036 (iii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 1037 59-12-804 is April 1:
 - (A) (I) distribute to the county legislative body or city legislative body 75% of the distribution determined in accordance with Subsection (6)(a); and
 - (II) deposit 25% of the distribution determined in accordance with Subsection (6)(a) into the General Fund; and
 - (B) beginning with the first fiscal year after the effective date of the repeal and for each subsequent fiscal year, deposit the entire amount of the distribution determined in accordance with Subsection (6)(a) into the General Fund; or
 - (iv) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is July 1, beginning on that effective date and for each subsequent fiscal year. deposit the entire amount of the distribution determined in accordance with Subsection (6)(a) into the General Fund.
- 1049 (7) (a) Subject to Subsection (7)(b) and Section 59-12-802, a county legislative body shall distribute the money the county legislative body receives in accordance with Subsection 1050 1051 (5) or (6):
- (i) for a county of the third or fourth class, to fund rural county health care facilities in 1052 1053 that county; and
 - (ii) for a county of the fifth or sixth class, to fund:

- 1055 (A) rural emergency medical services in that county;
- 1056 (B) federally qualified health centers in that county;
- (C) freestanding urgent care centers in that county; 1057
- 1058 (D) rural county health care facilities in that county:
- 1059 (E) rural health clinics in that county; or

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- (F) a combination of Subsections (7)(a)(ii)(A) through (E).
- (b) A county legislative body shall distribute the money the county legislative body receives in accordance with Subsection (5) or (6) to a center, clinic, facility, or service described in Subsection (7)(a) as determined by the county legislative body.
- (c) A center, clinic, facility, or service that receives a distribution in accordance with this Subsection (7) shall expend that distribution for the same purposes for which money collected from a tax under Section 59-12-802 may be expended.
- (8) (a) Subject to Subsection (8)(b), a city legislative body shall distribute the money the city legislative body receives in accordance with Subsection (5) or (6) to fund rural city hospitals in that city.
- (b) A city legislative body shall distribute a percentage of the money the city legislative body receives in accordance with Subsection (5) or (6) to each rural city hospital described in Subsection (8)(a) equal to the same percentage that the city legislative body distributes to that rural city hospital in accordance with Section 59-12-805 for the calendar year ending on the December 31 immediately preceding the first day of the fiscal year for which the city legislative body receives the distribution in accordance with Subsection (5) or (6).
- (c) A rural city hospital that receives a distribution in accordance with this Subsection (8) shall expend that distribution for the same purposes for which money collected from a tax under Section 59-12-804 may be expended.
- (9) Any money remaining in the Rural Health Care Facilities Account at the end of a fiscal year after the State Tax Commission makes the distributions required by this section shall lapse into the General Fund.

[26-18-402.] 26B-1-309. Medicaid Restricted Account.

- (1) There is created a restricted account in the General Fund known as the Medicaid Restricted Account.
 - (2) (a) Except as provided in Subsection (3), the following shall be deposited into the

1087	Medicaid Restricted Account:
1007	Medicald Nestricted Account.

- 1088 (i) any general funds appropriated to the department for the state plan for medical assistance or for the Division of Health Care Financing that are not expended by the 1089 1090 department in the fiscal year for which the general funds were appropriated and which are 1091 not otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account;
 - (ii) any unused state funds that are associated with the Medicaid program, as defined in Section 26-18-2, from the Department of Workforce Services [and the Department of Human Services]; and
- 1095 (iii) any penalties imposed and collected under:
- 1096 (A) Section 17B-2a-818.5;
- 1097 (B) Section 19-1-206;

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- 1098 (C) Section 63A-5b-607;
- 1099 (D) Section 63C-9-403;
- 1100 (E) Section 72-6-107.5; or
- 1101 (F) Section 79-2-404.
- 1102 (b) The account shall earn interest and all interest earned shall be deposited into the 1103 account.
 - (c) The Legislature may appropriate money in the restricted account to fund programs that expand medical assistance coverage and private health insurance plans to low income persons who have not traditionally been served by Medicaid, including the Utah Children's Health Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.
 - (3) For fiscal years 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 the following funds are nonlapsing:
 - (a) any general funds appropriated to the department for the state plan for medical assistance, or for the Division of Health Care Financing that are not expended by the department in the fiscal year in which the general funds were appropriated; and
- 1113 (b) funds described in Subsection (2)(a)(ii).

[26-18-402.5.] **26B-1-310.** Nonlapsing Medicaid funds. 1115

1116 (1) Notwithstanding Subsection 26-18-402(3), for fiscal years 2019-20, 2020-21, and 1117 2021-22, the funds described in Subsections 26-18-402(3)(a) and 26-18-402(2)(a)(ii) are nonlapsing. 1118

1119	(2) This section supersedes any conflicting provisions of Utah law.
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1121	[26-18a-4.] <u>26B-1-311.</u> Creation of Kurt Oscarson Children's Organ Transplant
1122	Account.
1123	(1) (a) There is created a restricted account within the General Fund known as the
1124	["]Kurt Oscarson Children's Organ Transplant Account.["]
1125	(b) Private contributions received under this section and Section 59-10-1308 shall be
1126	deposited into the restricted account to be used only for the programs and purposes
1127	described in Section 26-18a-3.
1128	(2) Money shall be appropriated from the restricted account to the committee in
1129	accordance with Title 63J, Chapter 1, Budgetary Procedures Act.
1130	(3) In addition to funds received under Section 59-10-1308, the committee may
1131	accept transfers, grants, gifts, bequests, or any money made available from any source to
1132	implement this chapter.
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1134	[26-18b-101.] <u>26B-1-312.</u> Allyson Gamble Organ Donation Contribution Fund
1135	created.
1136	(1) (a) There is created an expendable special revenue fund known as the Allyson
1137	Gamble Organ Donation Contribution Fund.
1138	(b) The Allyson Gamble Organ Donation Contribution Fund shall consist of:
1139	(i) private contributions;
1140	(ii) donations or grants from public or private entities;
1141	(iii) voluntary donations collected under Sections 41-1a-230.5 and 53-3-214.7;
1142	(iv) contributions deposited into the account in accordance with Section 41-1a-422;
1143	and
1144	(v) interest and earnings on fund money.
1145	(c) The cost of administering the Allyson Gamble Organ Donation Contribution Fund
1146	shall be paid from money in the fund.
1147	(2) The [Department of Health] <u>department</u> shall:
1148	(a) administer the funds deposited in the Allyson Gamble Organ Donation
1149	Contribution Fund; and
1150	(b) select qualified organizations and distribute the funds in the Allyson Gamble

Organ Donation Contribution Fund in accordance with Subsection (3). 1151 1152 (3) (a) The funds in the Allyson Gamble Organ Donation Contribution Fund may be distributed to a selected organization that: 1153 1154 (i) promotes and supports organ donation: (ii) assists in maintaining and operating a statewide organ donation registry; and 1155 1156 (iii) provides donor awareness education. 1157 (b) An organization that meets the criteria of Subsections (3)(a)(i) through (iii) may apply to the [Department of Health] department, in a manner prescribed by the department, 1158 1159 to receive a portion of the money contained in the Allyson Gamble Organ Donation 1160 Contribution Fund. (4) The [Department of Health] department may expend funds in the account to pay 1161 1162 the costs of administering the fund and issuing or reordering the Donate Life support special 1163 group license plate and decals. 1164 [26-21a-302.] 26B-1-313. Cancer Research Restricted Account. 1165 (1) As used in this section, "account" means the Cancer Research Restricted Account 1166 1167 created by this section. 1168 (2) There is created in the General Fund a restricted account known as the [*]Cancer Research Restricted Account.[*] 1169 1170 (3) The account shall be funded by: 1171 (a) contributions deposited into the account in accordance with Section 41-1a-422; 1172 (b) private contributions; (c) donations or grants from public or private entities; and 1173 1174 (d) interest and earnings on fund money. (4) The department shall distribute funds in the account to one or more charitable 1175 organizations that: 1176 1177 (a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue 1178 Code: 1179 (b) have been designated as an official cancer center of the state; (c) is a National Cancer Institute designated cancer center; and 1180 1181 (d) have as part of its primary mission:

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(i) cancer research programs in basic science, translational science, population

science, and clinical research to understand cancer from its beginnings; and 1183

- 1184 (ii) the dissemination and use of knowledge developed by the research described in Subsection (4)(d)(i) for the creation and improvement of cancer detection, treatments, 1185 1186 prevention, and outreach programs.
 - (5) (a) An organization described in Subsection (4) may apply to the department to receive a distribution in accordance with Subsection (4).
 - (b) An organization that receives a distribution from the department in accordance with Subsection (4) shall expend the distribution only to conduct cancer research for the purpose of making improvements in cancer treatments, cures, detection, and prevention of cancer at the molecular and genetic levels.
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules providing procedures for an organization to apply to the department to receive a distribution under Subsection (4).

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[26-21a-304.] 26B-1-314. Children with Cancer Support Restricted Account.

- (1) As used in this section, "account" means the Children with Cancer Support Restricted Account created in this section.
- (2) There is created in the General Fund a restricted account known as the "Children" with Cancer Support Restricted Account."
 - (3) The account shall be funded by:
 - (a) contributions deposited into the account in accordance with Section 41-1a-422;
- 1204 (b) private contributions;
- (c) donations or grants from public or private entities; and 1205
 - (d) interest and earnings on account money.
- (4) Upon appropriation by the Legislature, the department shall distribute funds in the 1207 1208 account to one or more charitable organizations that:
 - (a) qualify as tax exempt under Section 501(c)(3), Internal Revenue Code;
- (b) are hospitals for children's tertiary care with board certified pediatric hematologist 1210 1211 oncologists treating children, both on an inpatient and outpatient basis, with blood disorders 1212 and cancers from throughout the state;
- 1213 (c) are members of a national organization devoted exclusively to childhood and adolescent cancer research; 1214

1215	(d) have pediatric nurses trained in hematology oncology;
1216	(e) participate in one or more pediatric cancer clinical trials; and
1217	(f) have programs that provide assistance to children with cancer.
1218	(5) (a) An organization described in Subsection (4) may apply to the department to
1219	receive a distribution in accordance with Subsection (4).
1220	(b) An organization that receives a distribution from the department in accordance
1221	with Subsection (4) may expend the distribution only to create or support programs that
1222	provide assistance to children with cancer.
1223	(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1224	department may make rules providing procedures for an organization to apply to the
1225	department to receive a distribution under Subsection (4).
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1227	[26-36b-208.] <u>26B-1-315.</u> Medicaid Expansion Fund.
1228	(1) There is created an expendable special revenue fund known as the Medicaid
1229	Expansion Fund.
1230	(2) The fund consists of:
1231	(a) assessments collected under this chapter;
1232	(b) intergovernmental transfers under Section 26-36b-206;
1233	(c) savings attributable to the health coverage improvement program as determined
1234	by the department;
1235	(d) savings attributable to the enhancement waiver program as determined by the
1236	department;
1237	(e) savings attributable to the Medicaid waiver expansion as determined by the
1238	department;
1239	(f) savings attributable to the inclusion of psychotropic drugs on the preferred drug list
1240	under Subsection 26-18-2.4(3) as determined by the department;
1241	(g) revenues collected from the sales tax described in Subsection 59-12-103(12);
1242	(h) gifts, grants, donations, or any other conveyance of money that may be made to
1243	the fund from private sources;
1244	(i) interest earned on money in the fund; and
1245	(j) additional amounts as appropriated by the Legislature.

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(3) (a) The fund shall earn interest.

1247 (b) All interest earned on fund money shall be deposited into the fund. 1248 (4) (a) A state agency administering the provisions of this chapter may use money from the fund to pay the costs, not otherwise paid for with federal funds or other revenue 1249 1250 sources, of: 1251 (i) the health coverage improvement program; 1252 (ii) the enhancement waiver program; 1253 (iii) a Medicaid waiver expansion; and 1254 (iv) the outpatient upper payment limit supplemental payments under Section 1255 26-36b-210. 1256 (b) A state agency administering the provisions of this chapter may not use: (i) funds described in Subsection (2)(b) to pay the cost of private outpatient upper 1257 1258 payment limit supplemental payments; or 1259 (ii) money in the fund for any purpose not described in Subsection (4)(a). 1260 [26-36d-207.] 26B-1-316. Hospital Provider Assessment Expendable Revenue 1261 Fund. 1262 (1) There is created an expendable special revenue fund known as the "Hospital 1263 Provider Assessment Expendable Revenue Fund." 1264 1265 (2) The fund shall consist of: 1266 (a) the assessments collected by the department under this chapter; 1267 (b) any interest and penalties levied with the administration of this chapter; and (c) any other funds received as donations for the fund and appropriations from other 1268 1269 sources. 1270 (3) Money in the fund shall be used: 1271 (a) to support capitated rates consistent with Subsection 26-36d-203(1)(d) for 1272 accountable care organizations; and 1273 (b) to reimburse money collected by the division from a hospital through a mistake 1274 made under this chapter. 1275 (4) (a) Subject to Subsection (4)(b), for the fiscal year beginning July 1, 2019, and 1276 ending July 1, 2020, any fund balance in excess of the amount necessary to pay for the 1277 costs described in Subsection (3) shall be deposited into the General Fund.

(b) Subsection (4)(a) applies only to funds that were appropriated by the Legislature

1279	from the General Fund to the fund and the interest and penalties deposited into the fund
1280	under Subsection (2)(b).
1281	
1282	[26-37a-107.] <u>26B-1-317.</u> Ambulance Service Provider Assessment Expendable
1283	Revenue Fund.
1284	(1) There is created an expendable special revenue fund known as the "Ambulance
1285	Service Provider Assessment Expendable Revenue Fund."
1286	(2) The fund shall consist of:
1287	(a) the assessments collected by the division under this chapter;
1288	(b) the penalties collected by the division under this chapter;
1289	(c) donations to the fund; and
1290	(d) appropriations by the Legislature.
1291	(3) Money in the fund shall be used:
1292	(a) to support fee-for-service rates; and
1293	(b) to reimburse money to an ambulance service provider that is collected by the
1294	division from the ambulance service provider through a mistake made under this chapter.
1295	(4) (a) Subject to Subsection (4)(b), for the fiscal year beginning July 1, 2019, and
1296	ending July 1, 2020, any fund balance in excess of the amount necessary to pay for the
1297	costs described in Subsection (3) shall be deposited into the General Fund.
1298	(b) Subsection (4)(a) applies only to funds that were appropriated by the Legislature
1299	from the General Fund to the fund and the penalties deposited into the fund under
1300	Subsection (2)(b).
1301	
1302	[26-50-201.] <u>26B-1-318.</u> Traumatic Brain Injury Fund.
1303	(1) There is created an expendable special revenue fund entitled the Traumatic Brain
1304	Injury Fund.
1305	(2) The fund shall consist of:
1306	(a) gifts, grants, donations, or any other conveyance of money that may be made to
1307	the fund from private sources; and
1308	(b) additional amounts as appropriated by the Legislature.
1309	(3) The fund shall be administered by the executive director.
1310	(4) Fund money may be used to:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING DRAFT FOR DISCUSSION FURPOSES ONLY
1311	(a) educate the general public and professionals regarding understanding, treatment,
1312	and prevention of traumatic brain injury;
1313	(b) provide access to evaluations and coordinate short-term care to assist an
1314	individual in identifying services or support needs, resources, and benefits for which the
1315	individual may be eligible;
1316	(c) develop and support an information and referral system for persons with a
1317	traumatic brain injury and their families; and
1318	(d) provide grants to persons or organizations to provide the services described in
1319	Subsections (4)(a), (b), and (c).
1320	(5) Not less that 50% of the fund shall be used each fiscal year to directly assist
1321	individuals who meet the qualifications described in Subsection (6).
1322	(6) An individual who receives services either paid for from the fund, or through an
1323	organization under contract with the fund, shall:
1324	(a) be a resident of Utah;
1325	(b) have been diagnosed by a qualified professional as having a traumatic brain injury
1326	which results in impairment of cognitive or physical function; and
1327	(c) have a need that can be met within the requirements of this chapter.
1328	(7) The fund may not duplicate any services or support mechanisms being provided
1329	to an individual by any other government or private agency.
1330	(8) All actual and necessary operating expenses for the committee and staff shall be
1331	paid by the fund.
1332	(9) The fund may not be used for medical treatment, long-term care, or acute care.
1333	
1334	[26-54-102.] <u>26B-1-319.</u> Spinal Cord and Brain Injury Rehabilitation Fund
1335	Creation Administration Uses.
1336	(1) As used in this section, a "qualified IRC 501(c)(3) charitable clinic" means a
1337	professional medical clinic that:
1338	(a) provides rehabilitation services to individuals in the state:
1339	(i) who have a traumatic spinal cord or brain injury that tends to be nonprogressive or
1340	nondeteriorating; and

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(ii) who require post-acute care;

(b) employs licensed therapy clinicians;

1343	(c) has at least five years experience operating a post-acute care rehabilitation clinic
1344	in the state; and
1345	(d) has obtained tax-exempt status under Internal Revenue Code, 26 U.S.C. Sec.
1346	501(c)(3).
1347	(2) There is created an expendable special revenue fund known as the "Spinal Cord
1348	and Brain Injury Rehabilitation Fund."
1349	(3) The fund shall consist of:
1350	(a) gifts, grants, donations, or any other conveyance of money that may be made to
1351	the fund from private sources;
1352	(b) a portion of the impound fee as designated in Section 41-6a-1406;
1353	(c) the fees collected by the Motor Vehicle Division under Subsections 41-1a-1201(9)
1354	and 41-22-8(3); and
1355	(d) amounts appropriated by the Legislature.
1356	(4) The fund shall be administered by the executive director of the department, in
1357	consultation with the advisory committee created in Section 26-54-103.
1358	(5) Fund money shall be used to:
1359	(a) assist one or more qualified IRC 501(c)(3) charitable clinics to provide
1360	rehabilitation services to individuals who have a traumatic spinal cord or brain injury that
1361	tends to be nonprogressive or nondeteriorating, including:
1362	(i) physical, occupational, and speech therapy; and
1363	(ii) equipment for use in the qualified charitable clinic; and
1364	(b) pay for operating expenses of the advisory committee created by Section
1365	26-54-103, including the advisory committee's staff.
1366	
1367	[26-54-102.5.] <u>26B-1-320.</u> Pediatric Neuro-Rehabilitation Fund Creation
1368	Administration Uses.
1369	(1) As used in this section, a "qualified IRC 501(c)(3) charitable clinic" means a
1370	professional medical clinic that:
1371	(a) provides services for children in the state:
1372	(i) with neurological conditions, including:
1373	(A) cerebral palsy; and
1374	(B) spina bifida; and

1375 (ii) who require post-acute care; 1376 (b) employs licensed therapy clinicians; (c) has at least five years experience operating a post-acute care rehabilitation clinic 1377 in the state; and 1378 1379 (d) has obtained tax-exempt status under Internal Revenue Code, 26 U.S.C. Sec. 1380 501(c)(3). 1381 (2) There is created an expendable special revenue fund known as the "Pediatric Neuro-Rehabilitation Fund." 1382 1383 (3) The fund shall consist of: 1384 (a) gifts, grants, donations, or any other conveyance of money that may be made to the fund from private sources; and 1385 1386 (b) amounts appropriated to the fund by the Legislature. (4) The fund shall be administered by the executive director of the department, in 1387 1388 consultation with the advisory committee created in Section 26-54-103. 1389 (5) Fund money shall be used to: 1390 (a) assist one or more qualified IRC 501(c)(3) charitable clinics to provide physical or 1391 occupational therapy to children with neurological conditions; and 1392 (b) pay for operating expenses of the advisory committee created by Section 1393 26-54-103, including the advisory committee's staff. 1394 1395 [26-58-102.] 26B-1-321. Children with Heart Disease Support Restricted Account. 1396 1397 (1) As used in this section, "account" means the Children with Heart Disease Support Restricted Account created in Subsection (2). 1398 1399 (2) There is created in the General Fund a restricted account known as the "Children" 1400 with Heart Disease Support Restricted Account." 1401 (3) The account shall be funded by: (a) contributions deposited into the account in accordance with Section 41-1a-422; 1402 1403 (b) private contributions; 1404 (c) donations or grants from public or private entities; and 1405 (d) interest and earnings on fund money. 1406 (4) The Legislature shall appropriate money in the account to the department.

(5) Upon appropriation, the department shall distribute funds in the account to one or 1407 1408 more charitable organizations that: (a) qualify as being tax exempt under Section 501(c)(3), Internal Revenue Code; and 1409 1410 (b) have programs that provide awareness, education, support services, and 1411 advocacy for and on behalf of children with heart disease. 1412 (6) (a) An organization described in Subsection (5) may apply to the department to 1413 receive a distribution in accordance with Subsection (5). 1414 (b) An organization that receives a distribution from the department in accordance 1415 with Subsection (5) shall expend the distribution only to provide awareness, education, 1416 support services, and advocacy for and on behalf of children with heart disease. (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the 1417 1418 department may make rules providing procedures for an organization to apply to the department to receive a distribution under Subsection (5). 1419 1420 (7) In accordance with Section 63J-1-602.1, appropriations from the account are 1421 nonlapsing. 1422 1423 [26-67-205.] **26B-1-322.** Adult Autism Treatment Account. 1424 (1) There is created within the General Fund a restricted account known as the "Adult 1425 Autism Treatment Account." 1426 (2) The account consists of: 1427 (a) gifts, grants, donations, or any other conveyance of money that may be made to 1428 the fund from private sources; 1429 (b) interest earned on money in the account; and 1430 (c) money appropriated to the account by the Legislature. 1431 (3) Money from the fund shall be used only to: (a) fund grants awarded by the department under Section 26-67-201; and 1432 1433 (b) pay the advisory committee's operating expenses, including the cost of advisory committee staff if approved by the executive director. 1434 1435 (4) The state treasurer shall invest the money in the account in accordance with Title

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[62A-3-110.] 26B-1-323. "Out and About" Homebound Transportation

51, Chapter 7, State Money Management Act.

1439	Assistance Fund.
1440	(1) (a) There is created an expendable special revenue fund known as the "Out and
1441	About" Homebound Transportation Assistance Fund.
1442	(b) The "Out and About" Homebound Transportation Assistance Fund shall consist of:
1443	(i) private contributions;
1444	(ii) donations or grants from public or private entities;
1445	(iii) voluntary donations collected under Section 53-3-214.8; and
1446	(iv) interest and earnings on account money.
1447	(c) The cost of administering the "Out and About" Homebound Transportation
1448	Assistance Fund shall be paid from money in the fund.
1449	(2) The Division of Aging and Adult Services in the [Department of Human Services]
1450	department shall:
1451	(a) administer the funds contained in the "Out and About" Homebound Transportation
1452	Assistance Fund; and
1453	(b) select qualified organizations and distribute the funds in the "Out and About"
1454	Homebound Transportation Assistance Fund in accordance with Subsection (3).
1455	(3) (a) The division may distribute the funds in the "Out and About" Homebound
1456	Transportation Assistance Fund to a selected organization that provides public transportation
1457	to aging persons, high risk adults, or people with disabilities.
1458	(b) An organization that provides public transportation to aging persons, high risk
1459	adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a
1460	manner prescribed by the division, to receive all or part of the money contained in the "Out
1461	and About" Homebound Transportation Assistance Fund.
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1463	[62A-15-123.] <u>26B-1-324.</u> Statewide Behavioral Health Crisis Response
1464	Account Creation Administration Permitted uses.
1465	(1) There is created a restricted account within the General Fund known as the
1466	"Statewide Behavioral Health Crisis Response Account," consisting of:
1467	(a) money appropriated or otherwise made available by the Legislature; and
1468	(b) contributions of money, property, or equipment from federal agencies, political
1469	subdivisions of the state, or other persons.
1470	(2) (a) Subject to appropriations by the Legislature and any contributions to the

account described in Subsection (1)(b), the division shall disburse funds in the account only for the purpose of support or implementation of services or enhancements of those services in order to rapidly, efficiently, and effectively deliver 988 services in the state.

- (b) Funds distributed from the account to county local mental health and substance abuse authorities for the provision of crisis services are not subject to the 20% county match described in Sections 17-43-201 and 17-43-301.
- (c) Except as provided in Subsection (2)(d), the division shall prioritize expending funds from the account as follows:
- (i) the Statewide Mental Health Crisis Line, as defined in Section 62A-15-1301, including coordination with 911 emergency service, as defined in Section 69-2-102, and coordination with local substance abuse authorities as described in Section 17-43-201, and local mental health authorities, described in Section 17-43-301;
 - (ii) mitigation of any negative impacts on 911 emergency service from 988 services;
- (iii) mobile crisis outreach teams as defined in Section 62A-15-1401, distributed in accordance with rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (iv) behavioral health receiving centers as defined in Section 62A-15-118;
 - (v) stabilization services as described in Section 62A-1-104; and
- (vi) mental health crisis services provided by local substance abuse authorities as described in Section 17-43-201 and local mental health authorities described in Section 17-43-301 to provide prolonged mental health services for up to 90 days after the day on which an individual experiences a mental health crisis.
- (d) If the Legislature appropriates money to the account for a purpose described in Subsection (2)(c), the division shall use the appropriation for that purpose.
- (3) Subject to appropriations by the Legislature and any contributions to the account described in Subsection (1)(b), the division may expend funds in the account for administrative costs that the division incurs related to administering the account.
- (4) The division director shall submit and make available to the public a report before December of each year to the Behavioral Health Crisis Response Commission, as defined in Section 63C-18-202, the Social Services Appropriations Subcommittee, and the Legislative Management Committee that includes:
 - (a) the amount of each disbursement from the account;

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1503 (b) the recipient of each disbursement, the goods and services received, and a 1504 description of the project funded by the disbursement; (c) any conditions placed by the division on the disbursements from the account; 1505 1506 (d) the anticipated expenditures from the account for the next fiscal year: 1507 (e) the amount of any unexpended funds carried forward; 1508 (f) the number of Statewide Mental Health Crisis Line calls received: 1509 (g) the progress towards accomplishing the goals of providing statewide mental health 1510 crisis service; and 1511 (h) other relevant justification for ongoing support from the account. 1512 1513 [62A-15-1103.] 26B-1-325. Governor's Suicide Prevention Fund. 1514 (1) There is created an expendable special revenue fund known as the Governor's 1515 Suicide Prevention Fund. 1516 (2) The fund shall consist of donations described in Section 41-1a-422, gifts, grants, and bequests of real property or personal property made to the fund. 1517 1518 (3) A donor to the fund may designate a specific purpose for the use of the donor's donation, if the designated purpose is described in Subsection (4). 1519 1520 (4) (a) Subject to Subsection (3), money in the fund shall be used for the following 1521 activities: 1522 (i) efforts to directly improve mental health crisis response: 1523 (ii) efforts that directly reduce risk factors associated with suicide; and 1524 (iii) efforts that directly enhance known protective factors associated with suicide 1525 reduction. 1526 (b) Efforts described in Subsections (4)(a)(ii) and (iii) include the components of the state suicide prevention program described in Subsection 62A-15-1101(3). 1527 1528 (5) The division shall establish a grant application and review process for the 1529 expenditure of money from the fund. (6) The grant application and review process shall describe: 1530 1531 (a) requirements to complete a grant application; (b) requirements to receive funding; 1532 1533 (c) criteria for the approval of a grant application;

(d) standards for evaluating the effectiveness of a project proposed in a grant

1535	application; and
1536	(e) support offered by the division to complete a grant application.
1537	(7) The division shall:
1538	(a) review a grant application for completeness;
1539	(b) make a recommendation to the governor or the governor's designee regarding a
1540	grant application;
1541	(c) send a grant application to the governor or the governor's designee for evaluation
1542	and approval or rejection;
1543	(d) inform a grant applicant of the governor or the governor's designee's
1544	determination regarding the grant application; and
1545	(e) direct the fund administrator to release funding for grant applications approved by
1546	the governor or the governor's designee.
1547	(8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7,
1548	State Money Management Act, except that all interest or other earnings derived from money
1549	in the fund shall be deposited into the fund.
1550	(9) Money in the fund may not be used for the Office of the Governor's administrative
1551	expenses that are normally provided for by legislative appropriation.
1552	(10) The governor or the governor's designee may authorize the expenditure of fund
1553	money in accordance with this section.
1554	(11) The governor shall make an annual report to the Legislature regarding the status
1555	of the fund, including a report on the contributions received, expenditures made, and
1556	programs and services funded.
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1558	[62A-15-1104.] <u>26B-1-326.</u> Suicide Prevention and Education Fund.
1559	(1) There is created an expendable special revenue fund known as the Suicide
1560	Prevention and Education Fund.
1561	(2) The fund shall consist of funds transferred from the Concealed Weapons Account
1562	in accordance with Subsection 53-5-707(5)(d).
1563	(3) Money in the fund shall be used for suicide prevention efforts that include a focus
1564	on firearm safety as related to suicide prevention.

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(4) The division shall establish a process by rule in accordance with Title 63G,

Chapter 3, Utah Administrative Rulemaking Act, for the expenditure of money from the fund.

1567	(5) The division shall make an annual report to the Legislature regarding the status of				
1568	the fund, including a report detailing amounts received, expenditures made, and programs				
1569	and services funded.				
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1571	[62A-15-1502.] <u>26B-1-327.</u> Survivors of Suicide Loss Account.				
1572	(1) There is created a restricted account within the General Fund known as the				
1573	"Survivors of Suicide Loss Account."				
1574	(2) The division shall administer the account in accordance with this part.				
1575	(3) The account shall consist of:				
1576	(a) money appropriated to the account by the Legislature; and				
1577	(b) interest earned on money in the account.				
1578	(4) Upon appropriation, the division shall award grants from the account to a person				
1579	who provides, for no or minimal cost:				
1580	(a) clean-up of property affected or damaged by an individual's suicide, as				
1581	reimbursement for the costs incurred for the clean-up; and				
1582	(b) bereavement services to a relative, legal guardian, or cohabitant of an individual				
1583	who dies by suicide.				
1584	(5) Before November 30 of each year, the division shall report to the Health and				
1585	Human Services Interim Committee regarding the status of the account and expenditures				
1586	made from the account.				
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1588	[62A-15-1602.] <u>26B-1-328.</u> Psychiatric and Psychotherapeutic Consultation				
1589	Program Account.				
1590	(1) There is created a restricted account within the General Fund known as the				
1591	"Psychiatric and Psychotherapeutic Consultation Program Account."				
1592	(2) The division shall administer the account in accordance with this part.				
1593	(3) The account shall consist of:				
1594	(a) money appropriated to the account by the Legislature; and				
1595	(b) interest earned on money in the account.				
1596	(4) Upon appropriation, the division shall award grants from the account to:				
1597	(a) at least one health care facility to implement a program that provides a primary				
1598	care provider access to a telehealth psychiatric consultation when the primary care provider				

is evaluating a patient for or providing a patient mental health treatment; and

- (b) at least one child mental health care facility to implement a program that provides access to an early childhood psychotherapeutic telehealth consultation to:
- (i) a mental health therapist when the mental health therapist is evaluating a child for or providing a child mental health treatment; or
 - (ii) a child care provider when the child care provider is providing child care to a child.
- 1605 (5) The division may award and distribute grant money to a health care facility or child 1606 mental health care facility only if the health care facility or child mental health care facility:
 - (a) is located in the state; and

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- (b) submits an application in accordance with Subsection (6).
- (6) An application for a grant under this section shall include:
- (a) the number of psychiatrists employed by the health care facility or the number of child mental health therapists employed by the child mental health care facility;
 - (b) the health care facility's or child mental health care facility's plan to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4);
 - (c) the estimated cost to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4):
 - (d) any plan to use one or more funding sources in addition to a grant under this section to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4);
 - (e) the amount of grant money requested to fund the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4); and
 - (f) any existing or planned contract or partnership between the health care facility and another person to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4).
 - (7) A health care facility or child mental health care facility that receives grant money under this section shall file a report with the division before October 1 of each year that details for the immediately preceding calendar year:
 - (a) the type and effectiveness of each service provided in the telehealth psychiatric

1631	program or the early childhood psychotherapeutic telehealth consultation program;
1632	(b) the utilization of the telehealth psychiatric program or the early childhood
1633	psychotherapeutic telehealth consultation program based on metrics or categories
1634	determined by the division;
1635	(c) the total amount expended from the grant money; and
1636	(d) the intended use for grant money that has not been expended.
1637	(8) Before November 30 of each year, the division shall report to the Health and
1638	Human Services Interim Committee regarding:
1639	(a) the status of the account and expenditures made from the account; and
1640	(b) a summary of any report provided to the division under Subsection (7).
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1642	[62A-15-1702.] <u>26B-1-329.</u> Mental Health Services Donation Fund.
1643	(1) There is created an expendable special revenue fund known as the "Mental
1644	Health Services Donation Fund."
1645	(2) The fund shall consist of:
1646	(a) gifts, grants, donations, or any other conveyance of money that may be made to
1647	the fund from public or private individuals or entities; and
1648	(b) interest earned on money in the fund.
1649	(3) The division shall administer the fund in accordance with this section.
1650	(4) The division shall award fund money to an entity in the state that provides mental
1651	health and substance abuse treatment for the purpose of:
1652	(a) providing through telehealth or in-person services, mental health therapy to
1653	qualified individuals;
1654	(b) providing access to evaluations and coordination of short-term care to assist a
1655	qualified individual in identifying services or support needs, resources, or benefits for which
1656	the qualified individual may be eligible; and
1657	(c) developing a system for a qualified individual and a qualified individual's family to
1658	access information and referrals for mental health therapy.
1659	(5) Fund money may only be used for the purposes described in Subsection (4).
1660	(6) The division shall provide an annual report to the Behavioral Health Crisis
1661	Response Commission, created in Section 63C-18-202, regarding:

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(a) the entity that is awarded a grant under Subsection (4);

1663	(b) the number of qualified individuals served by the entity with fund money; and
1664	(c) any costs or benefits as a result of the award of the grant.
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1666	[62A-5-206.5.] <u>26B-1-330.</u> Utah State Developmental Center Miscellaneous
1667	Donation Fund Use.
1668	(1) There is created an expendable special revenue fund known as the "Utah State
1669	Developmental Center Miscellaneous Donation Fund."
1670	(2) The board shall deposit donations made to the Utah State Developmental Center
1671	under Section 62A-1-111 into the expendable special revenue fund described in Subsection
1672	(1).
1673	(3) The state treasurer shall invest the money in the fund described in Subsection (1)
1674	according to the procedures and requirements of Title 51, Chapter 7, State Money
1675	Management Act, and the revenue received from the investment shall remain with the fund
1676	described in Subsection (1).
1677	(4) (a) Except as provided in Subsection (5), the money or revenue in the fund
1678	described in Subsection (1) may not be diverted, appropriated, expended, or committed to be
1679	expended for a purpose that is not listed in this section.
1680	(b) Notwithstanding Section 63J-1-211, the Legislature may not appropriate money or
1681	revenue from the fund described in Subsection (1) to eliminate or otherwise reduce an
1682	operating deficit if the money or revenue appropriated from the fund is expended or
1683	committed to be expended for a purpose other than one listed in this section.
1684	(c) The Legislature may not amend the purposes for which money or revenue in the
1685	fund described in Subsection (1) may be expended or committed to be expended except by
1686	the affirmative vote of two-thirds of all the members elected to each house.
1687	(5) (a) The board shall approve expenditures of money and revenue in the fund
1688	described in Subsection (1).
1689	(b) The board may expend money and revenue in the fund described in Subsection
1690	(1) only:
1691	(i) as designated by the donor; or
1692	(ii) for the benefit of:
1693	(A) residents of the developmental center; or

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(B) individuals with disabilities who receive services and support from the Utah State

- 1695 Developmental Center, as described in Subsection 62A-5-201(2)(b).
- 1696 (c) Money and revenue in the fund described in Subsection (1) may not be used for items normally paid for by operating revenues or for items related to personnel costs without 1697 1698 specific legislative authorization.

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- [62A-5-206.7.] 26B-1-331. Utah State Developmental Center Long-Term **Sustainability Fund -- Fund management.**
- 1702 (1) There is created a special revenue fund entitled the "Utah State Developmental 1703 Center Long-Term Sustainability Fund."
 - (2) The sustainability fund consists of:
- (a) revenue generated from the lease, except any lease existing on May 1, 1995, of 1705 1706 land associated with the Utah State Developmental Center;
- (b) all proceeds from the sale or other disposition of real property, water rights, or 1707 1708 water shares associated with the Utah State Developmental Center; and
- 1709 (c) all existing money in the Utah State Developmental Center Land Fund, created in Section 62A-5-206.6. 1710
- 1711 (3) The state treasurer shall invest sustainability fund money by following the procedures and requirements in Section 62A-5-206.8. 1712
- 1713 (4) (a) The board shall ensure that money or revenue deposited into the sustainability 1714 fund is irrevocable and is expended only as provided in Subsection (5).
- 1715 (b) The Legislature may not amend the purposes in Subsection (5) for which money 1716 or revenue in the fund may be expended or committed to be expended, except by the 1717 affirmative vote of two-thirds of all the members elected to each house.
- 1718 (5) (a) Money may be expended from the sustainability fund to:
- 1719 (i) fulfill the functions of the Utah State Developmental Center described in Sections 1720 62A-5-201 and 62A-5-203; and
- 1721 (ii) assist the division in the division's administration of services and supports 1722 described in Sections 62A-5-102 and 62A-5-103.
- 1723 (b) Money from the sustainability fund may not be expended:
- (i) for a purpose other than the purposes described in Subsection (5)(a); or 1724
- 1725 (ii) to reduce the amount of money that the Legislature appropriates from the General 1726 Fund for the purposes described in Subsection (5)(a).

(6) Money may be expended from the sustainability fund only under the following 1727 conditions: 1728 1729 (a) if the balance of the sustainability fund is at least \$5,000,000 at the end of the 1730 fiscal year, the board may expend the earnings generated by the sustainability fund during 1731 the fiscal year for a purpose described in Subsection (5)(a); (b) if the balance of the sustainability fund is at least \$50,000,000 at the end of the 1732 1733 fiscal year, the Legislature may appropriate to the division up to 5% of the balance of the 1734 sustainability fund for a purpose described in Subsection (5)(a); and 1735 (c) the board or the division may not expend any money from the sustainability fund, 1736 except as provided in Subsection (6)(a), without legislative appropriation. 1737 (7) The sustainability fund is revocable only by the affirmative vote of two-thirds of all 1738 the members elected to each house of the Legislature. 1739 (8) (a) The state treasurer shall invest the assets of the sustainability fund with the 1740 primary goal of providing for the stability, income, and growth of the principal. 1741 (b) Nothing in this section requires a specific outcome in investing. 1742 (c) The state treasurer may deduct any administrative costs incurred in managing sustainability fund assets from earnings before depositing earnings into the sustainability 1743 1744 fund. (d) (i) The state treasurer may employ professional asset managers to assist in the 1745 1746 investment of assets of the sustainability fund. 1747 (ii) The state treasurer may only provide compensation to asset managers from 1748 earnings generated by the sustainability fund's investments. 1749 (e) The state treasurer shall invest and manage the sustainability fund assets as a prudent investor would under Section 67-19d-302. 1750 1751 1752 [26-61a-109.] 26B-1-332. Qualified Patient Enterprise Fund -- Creation --1753 1754 Revenue neutrality.

754 Revenue neutrality

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- 1755 (1) There is created an enterprise fund known as the "Qualified Patient Enterprise 1756 Fund."
 - (2) The fund created in this section is funded from:
 - (a) money the department deposits into the fund under this chapter;

- (b) appropriations the Legislature makes to the fund; and 1759 1760 (c) the interest described in Subsection (3). (3) Interest earned on the fund shall be deposited into the fund. 1761 1762 (4) The department may only use money in the fund to fund the department's 1763 responsibilities under this chapter. 1764 (5) The department shall set fees authorized under this chapter in amounts that the 1765 department anticipates are necessary, in total, to cover the department's cost to implement 1766 this chapter. 1767 1768 Part 4. Boards, Commissions, Councils, and Advisory Committees. 1769 1770 [26-1-11.] 26B-1-401. Executive director -- Power to amend, modify, or rescind 1771 committee rules. 1772 The executive director pursuant to the requirements of the Administrative Rulemaking 1773 Act may amend, modify, or rescind any rule of any committee created under Section 26B-1-204 if the rule creates a clear present hazard or clear potential hazard to the public 1774 1775 health except that the executive director may not act until after discussion with the 1776 appropriate committee. 1777 [26-1-41.] 26B-1-402. Rare Disease Advisory Council Grant Program --1778 Creation -- Reporting. 1779 1780 (1) As used in this section: 1781 (a) "Council" means the Rare Disease Advisory Council described in Subsection (3). 1782 (b) "Grantee" means the recipient of a grant under this section to operate the 1783 program. (c) "Rare disease" means a disease that affects fewer than 200,000 individuals in the 1784 United States. 1785
 - (2) (a) Within legislative appropriations, the department shall issue a request for proposals for a grant to administer the provisions of this section.
 - (b) The department may issue a grant under this section if the grantee agrees to:
 - (i) convene the council in accordance with Subsection (3);
 - (ii) provide staff and other administrative support to the council; and

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- 1791 (iii) in coordination with the department, report to the Legislature in accordance with Subsection (4). 1792 (3) The Rare Disease Advisory Council convened by the grantee shall: 1793 1794 (a) advise the Legislature and state agencies on providing services and care to 1795 individuals with a rare disease; 1796 (b) make recommendations to the Legislature and state agencies on improving 1797 access to treatment and services provided to individuals with a rare disease; 1798 (c) identify best practices to improve the care and treatment of individuals in the state 1799 with a rare disease; 1800 (d) meet at least two times in each calendar year; and (e) be composed of members identified by the department, including at least the 1801 1802 following individuals: 1803 (i) a representative from the department; 1804 (ii) researchers and physicians who specialize in rare diseases, including at least one 1805 representative from the University of Utah; 1806 (iii) two individuals who have a rare disease or are the parent or caregiver of an 1807 individual with a rare disease; and 1808 (iv) two representatives from one or more rare disease patient organizations that 1809 operate in the state. 1810 (4) Before November 30, 2021, and before November 30 of every odd-numbered year thereafter, the department shall report to the Health and Human Services Interim 1811 1812 Committee on: 1813 (a) the activities of the grantee and the council; and 1814 (b) recommendations and best practices regarding the ongoing needs of individuals in the state with a rare disease. 1815 1816 [26-7-13.] 26B-1-403. Opioid and Overdose Fatality Review Committee. 1817 (1) As used in this section: 1818
- (a) "Committee" means the Opioid and Overdose Fatality Review Committee created 1819 1820 in this section.
- 1821 (b) "Opioid overdose death" means a death primarily caused by opioids or another 1822 substance that closely resembles an opioid.

1823	(2) The department shall establish the Opioid and Overdose Fatality Review
1824	Committee.
1825	(3) (a) The committee shall consist of:
1826	(i) the attorney general, or the attorney general's designee;
1827	(ii) a state, county, or municipal law enforcement officer;
1828	(iii) the manager of the department's Violence Injury Program, or the manager's
1829	designee;
1830	(iv) an emergency medical services provider;
1831	(v) a representative from the Office of the Medical Examiner;
1832	(vi) a representative from the Division of Substance Abuse and Mental Health;
1833	(vii) a representative from the Office of Vital Records;
1834	(viii) a representative from the Office of Health Care Statistics;
1835	(ix) a representative from the Division of Professional Licensing;
1836	(x) a healthcare professional who specializes in the prevention, diagnosis, and
1837	treatment of substance use disorders;
1838	(xi) a representative from a state or local jail or detention center;
1839	(xii) a representative from the Department of Corrections;
1840	(xiii) a representative from Juvenile Justice Services;
1841	(xiv) a representative from the Department of Public Safety;
1842	(xv) a representative from the Commission on Criminal and Juvenile Justice;
1843	(xvi) a physician from a Utah-based medical center; and
1844	(xvii) a physician from a nonprofit vertically integrated health care organization.
1845	(b) The president of the Senate may appoint one member of the Senate, and the
1846	speaker of the House of Representatives may appoint one member of the House of
1847	Representatives, to serve on the committee.
1848	(4) The executive director [of the department] shall appoint a committee coordinator.
1849	(5) (a) The department shall give the committee access to all reports, records, and
1850	other documents that are relevant to the committee's responsibilities under Subsection (6)
1851	including reports, records, or documents that are private, controlled, or protected under Title
1852	63G, Chapter 2, Government Records Access and Management Act.
1853	(b) In accordance with Subsection 63G-2-206(6), the committee is subject to the

same restrictions on disclosure of a report, record, or other document received under

1855	Subsection (5)(a) as the department.
1856	(6) The committee shall:
1857	(a) conduct a multidisciplinary review of available information regarding a decedent of
1858	an opioid overdose death, which shall include:
1859	(i) consideration of the decedent's points of contact with health care systems, social
1860	services systems, criminal justice systems, and other systems; and
1861	(ii) identification of specific factors that put the decedent at risk for opioid overdose;
1862	(b) promote cooperation and coordination among government entities involved in
1863	opioid misuse, abuse, or overdose prevention;
1864	(c) develop an understanding of the causes and incidence of opioid overdose deaths
1865	in the state;
1866	(d) make recommendations for changes to law or policy that may prevent opioid
1867	overdose deaths;
1868	(e) inform public health and public safety entities of emerging trends in opioid
1869	overdose deaths;
1870	(f) monitor overdose trends on non-opioid overdose deaths; and
1871	(g) review non-opioid overdose deaths in the manner described in Subsection (6)(a),
1872	when the committee determines that there are a substantial number of overdose deaths in
1873	the state caused by the use of a non-opioid.
1874	(7) A committee may interview or request information from a staff member, a provider,
1875	or any other person who may have knowledge or expertise that is relevant to the review of an
1876	opioid overdose death.
1877	(8) A majority vote of committee members present constitutes the action of the
1878	committee.
1879	(9) The committee may meet up to eight times each year.
1880	(10) When an individual case is discussed in a committee meeting under Subsection
1881	(6)(a), (6)(g), or (7), the committee shall close the meeting in accordance with Sections
1882	52-4-204 through 52-4-206.
1883	
1884	[26-8a-103.] <u>26B-1-404.</u> State Emergency Medical Services Committee
1885	Membership Expenses.
1886	(1) The State Emergency Medical Services Committee created by Section 26B-1-204

- shall be composed of the following 19 members appointed by the governor, at least six of whom shall reside in a county of the third, fourth, fifth, or sixth class:
- (a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:
 - (i) one surgeon who actively provides trauma care at a hospital;
- (ii) one rural physician involved in emergency medical care;
- 1893 (iii) two physicians who practice in the emergency department of a general acute 1894 hospital; and
- (iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;
 - (b) two representatives from private ambulance providers;
- 1898 (c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;
 - (d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);
- 1904 (e) one director of a law enforcement agency that provides emergency medical services;
 - (f) one hospital administrator;
 - (g) one emergency care nurse;
 - (h) one paramedic in active field practice;
- (i) one emergency medical technician in active field practice;
- (j) one certified emergency medical dispatcher affiliated with an emergency medical dispatch center;
 - (k) one licensed mental health professional with experience as a first responder;
- 1913 (I) one licensed behavioral emergency services technician; and
- 1914 (m) one consumer.

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- 1915 (2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a 1916 four-year term beginning July 1.
- 1917 (b) Notwithstanding Subsection (2)(a), the governor:
- (i) shall, at the time of appointment or reappointment, adjust the length of terms to

1919 ensure that the terms of committee members are staggered so that approximately half of the 1920 committee is appointed every two years; 1921

- (ii) may not reappoint a member for more than two consecutive terms; and
- 1922 (iii) shall:

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- 1923 (A) initially appoint the second member under Subsection (1)(b) from a different 1924 private provider than the private provider currently serving under Subsection (1)(b); and
- 1925 (B) thereafter stagger each replacement of a member in Subsection (1)(b) so that the member positions under Subsection (1)(b) are not held by representatives of the same 1926 1927 private provider.
- 1928 (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term. 1929
- 1930 (3) (a) (i) Each January, the committee shall organize and select one of the 1931 committee's members as chair and one member as vice chair.
- 1932 (ii) The committee may organize standing or ad hoc subcommittees, which shall 1933 operate in accordance with guidelines established by the committee.
 - (b) (i) The chair shall convene a minimum of four meetings per year.
- 1935 (ii) The chair may call special meetings.
- 1936 (iii) The chair shall call a meeting upon request of five or more members of the 1937 committee.
- 1938 (c) (i) Nine members of the committee constitute a quorum for the transaction of 1939 business.
 - (ii) The action of a majority of the members present is the action of the committee.
- 1941 (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with: 1942
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
- 1945 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107. 1946
- 1947 (5) Administrative services for the committee shall be provided by the department.
- 1949 [26-8a-107.] 26B-1-405. Air Ambulance Committee -- Membership -- Duties.
- (1) The Air Ambulance Committee created by Section 26B-1-204 shall be composed 1950

of the following members: 1951 1952 (a) the state emergency medical services medical director; 1953 (b) one physician who: 1954 (i) is licensed under: 1955 (A) Title 58, Chapter 67, Utah Medical Practice Act; 1956 (B) Title 58, Chapter 67b, Interstate Medical Licensure Compact; or 1957 (C) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; (ii) actively provides trauma or emergency care at a Utah hospital; and 1958 (iii) has experience and is actively involved in state and national air medical transport 1959 1960 issues: (c) one member from each level 1 and level 2 trauma center in the state of Utah. 1961 1962 selected by the trauma center the member represents; (d) one registered nurse who: 1963 1964 (i) is licensed under Title 58, Chapter 31b, Nurse Practice Act; and 1965 (ii) currently works as a flight nurse for an air medical transport provider in the state of 1966 Utah: 1967 (e) one paramedic who: 1968 (i) is licensed under this chapter; and (ii) currently works for an air medical transport provider in the state of Utah; and 1969 1970 (f) two members, each from a different for-profit air medical transport company 1971 operating in the state of Utah. 1972 (2) The state emergency medical services medical director shall appoint the physician 1973 member under Subsection (1)(b), and the physician shall serve as the chair of the Air Ambulance Committee. 1974 1975 (3) The chair of the Air Ambulance Committee shall: 1976 (a) appoint the Air Ambulance Committee members under Subsections (1)(c) through 1977 (f); (b) designate the member of the Air Ambulance Committee to serve as the vice chair 1978 1979 of the committee; and 1980 (c) set the agenda for Air Ambulance Committee meetings. 1981 (4) (a) Except as provided in Subsection (4)(b), members shall be appointed to a

two-year term.

- 1983 (b) Notwithstanding Subsection (4)(a), the Air Ambulance Committee chair shall, at 1984 the time of appointment or reappointment, adjust the length of the terms of committee 1985 members to ensure that the terms of the committee members are staggered so that 1986 approximately half of the committee is reappointed every two years.
- 1987 (5) (a) A majority of the members of the Air Ambulance Committee constitutes a quorum.
- 1989 (b) The action of a majority of a quorum constitutes the action of the Air Ambulance 1990 Committee.
 - (6) The Air Ambulance Committee shall, before November 30, 2019, and before November 30 of every odd-numbered year thereafter, provide recommendations to the Health and Human Services Interim Committee regarding the development of state standards and requirements related to:
 - (a) air medical transport provider licensure and accreditation;
 - (b) air medical transport medical personnel qualifications and training; and
 - (c) other standards and requirements to ensure patients receive appropriate and high-quality medical attention and care by air medical transport providers operating in the state of Utah.
 - (7) (a) The committee shall prepare an annual report, using any data available to the department and in consultation with the Insurance Department, that includes the following information for each air medical transport provider that operates in the state:
 - (i) which health insurers in the state the air medical transport provider contracts with;
 - (ii) if sufficient data is available to the committee, the average charge for air medical transport services for a patient who is uninsured or out of network; and
 - (iii) whether the air medical transport provider balance bills a patient for any charge not paid by the patient's health insurer.
 - (b) When calculating the average charge under Subsection (7)(a)(ii), the committee shall distinguish between:
 - (i) a rotary wing provider and a fixed wing provider; and
- 2011 (ii) any other differences between air medical transport service providers that may 2012 substantially affect the cost of the air medical transport service, as determined by the 2013 committee.
 - (c) The department shall:

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- 2015 (i) post the committee's findings under Subsection (7)(a) on the department's website; 2016 and
- 2017 (ii) send the committee's findings under Subsection (7)(a) to each emergency medical service provider, health care facility, and other entity that has regular contact with patients in need of air medical transport provider services.
 - (8) An Air Ambulance Committee member may not receive compensation, benefits, per diem, or travel expenses for the member's service on the committee.
 - (9) The Office of the Attorney General shall provide staff support to the Air Ambulance Committee.
- 2024 (10) The Air Ambulance Committee shall report to the Health and Human Services 2025 Interim Committee before November 30, 2023, regarding the sunset of this section in 2026 accordance with Section 63I-2-226.

[26-8a-251.] <u>26B-1-406.</u> Trauma system advisory committee.

- (1) There is created within the department the trauma system advisory committee.
- (2) (a) The committee shall be comprised of individuals knowledgeable in adult or pediatric trauma care, including physicians, physician assistants, nurses, hospital administrators, emergency medical services personnel, government officials, consumers, and persons affiliated with professional health care associations.
- (b) Representation on the committee shall be broad and balanced among the health care delivery systems in the state with no more than three representatives coming from any single delivery system.
 - (3) The committee shall:

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- (a) advise the department regarding trauma system needs throughout the state;
- 2039 (b) assist the department in evaluating the quality and outcomes of the overall trauma 2040 system;
- 2041 (c) review and comment on proposals and rules governing the statewide trauma 2042 system; and
- 2043 (d) make recommendations for the development of statewide triage, treatment, transportation, and transfer guidelines.
 - (4) The department shall:
 - (a) determine, by rule, the term and causes for removal of committee members;

2047	(b) establish committee procedures and administration policies consistent with this			
2048	chapter and department rule; and			
2049	(c) provide administrative support to the committee.			
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2051	[26-8d-104.] <u>26B-1-407.</u> Stroke registry advisory committee.			
2052	(1) There is created within the department a stroke registry advisory committee.			
2053	(2) The stroke registry advisory committee created in Subsection (1) shall:			
2054	(a) be composed of individuals knowledgeable in adult and pediatric stroke care,			
2055	including physicians, physician assistants, nurses, hospital administrators, emergency			
2056	medical services personnel, government officials, consumers, and persons affiliated with			
2057	professional health care associations;			
2058	(b) advise the department regarding the development and implementation of the			
2059	stroke registry;			
2060	(c) assist the department in evaluating the quality and outcomes of the stroke registry;			
2061	and			
2062	(d) review and comment on proposals and rules governing the statewide stroke			
2063	registry.			
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2065	[26-8d-105.] <u>26B-1-408.</u> Cardiac registry advisory committee.			
2066	(1) There is created within the department a cardiac registry advisory committee.			
2067	(2) The cardiac registry advisory committee created in Subsection (1) shall:			
2068	(a) be composed of individuals knowledgeable in adult and pediatric cardiac care,			
2069	including physicians, physician assistants, nurses, hospital administrators, emergency			
2070	medical services personnel, government officials, consumers, and persons affiliated with			
2071	professional health care associations;			
2072	(b) advise the department regarding the development and implementation of the			
2073	cardiac registry;			
2074	(c) assist the department in evaluating the quality and outcomes of the cardiac			
2075	registry; and			
2076	(d) review and comment on proposals and rules governing the statewide cardiac			

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registry.

2079	[26-9f-103.] <u>26B-1-409.</u> Utah Digital Health Service Commission.
2080	(1) There is created within the department the Utah Digital Health Service
2081	Commission.
2082	(2) The governor shall appoint 13 members to the commission with the advice and
2083	consent of the Senate, as follows:
2084	(a) a physician who is involved in digital health service;
2085	(b) a representative of a health care system or a licensed health care facility as that
2086	term is defined in Section 26-21-2;
2087	(c) a representative of rural Utah, which may be a person nominated by an advisory
2088	committee on rural health issues;
2089	(d) a member of the public who is not involved with digital health service;
2090	(e) a nurse who is involved in digital health service; and
2091	(f) eight members who fall into one or more of the following categories:
2092	(i) individuals who use digital health service in a public or private institution;
2093	(ii) individuals who use digital health service in serving medically underserved
2094	populations;
2095	(iii) nonphysician health care providers involved in digital health service;
2096	(iv) information technology professionals involved in digital health service;
2097	(v) representatives of the health insurance industry;
2098	(vi) telehealth digital health service consumer advocates; and
2099	(vii) individuals who use digital health service in serving mental or behavioral health
2100	populations.
2101	(3) (a) The commission shall annually elect a chairperson from its membership. The
2102	chairperson shall report to the executive director of the department.
2103	(b) The commission shall hold meetings at least once every three months. Meetings
2104	may be held from time to time on the call of the chair or a majority of the board members.
2105	(c) Seven commission members are necessary to constitute a quorum at any meeting
2106	and, if a quorum exists, the action of a majority of members present shall be the action of the
2107	commission.

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(b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment

(4) (a) Except as provided in Subsection (4)(b), a commission member shall be

appointed for a three-year term and eligible for two reappointments.

- or reappointment, adjust the length of terms to ensure that the terms of commission
 members are staggered so that approximately 1/3 of the commission is appointed each year.
- 2113 (c) A commission member shall continue in office until the expiration of the member's 2114 term and until a successor is appointed, which may not exceed 90 days after the formal 2115 expiration of the term.
- 2116 (d) Notwithstanding Subsection (4)(c), a commission member who fails to attend 75% of the scheduled meetings in a calendar year shall be disqualified from serving.
- 2118 (e) When a vacancy occurs in membership for any reason, the replacement shall be appointed for the unexpired term.
- 2120 (5) A member may not receive compensation or benefits for the member's service, 2121 but, at the executive director's discretion, may receive per diem and travel expenses in 2122 accordance with:
- 2123 (a) Section 63A-3-106;
- 2124 (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- 2127 (6) The department shall provide informatics staff support to the commission.
- 2128 (7) The funding of the commission shall be a separate line item to the department in the annual appropriations act.
- 2131 [26-10b-106.] 26B-1-410. Primary Care Grant Committee.
- 2132 (1) As used in this section:
- 2133 (a) "Committee" means the Primary Care Grant Committee created in Subsection
- 2134 <u>(2).</u>

- 2135 (b) "Program" means the Primary Care Grant Program created in Section
- 2136 <u>26B-X-XXX.</u>
- (2) There is created the Primary Care Grant Committee.
- 2138 [(1)] (3) The committee shall:
- 2139 (a) review grant applications forwarded to the committee by the department under 2140 Subsection 26-10b-104(1);
- 2141 (b) recommend, to the executive director, grant applications to award under 2142 Subsection 26-10b-102(1);

2143	(c) evaluate:			
2144	(i) the need for primary health care in different areas of the state;			
2145	(ii) how the program is addressing those needs; and			
2146	(iii) the overall effectiveness and efficiency of the program;			
2147	(d) review annual reports from primary care grant recipients;			
2148	(e) meet as necessary to carry out its duties, or upon a call by the committee chair or			
2149	by a majority of committee members; and			
2150	(f) make rules, with the concurrence of the department, in accordance with Title 63G,			
2151	Chapter 3, Utah Administrative Rulemaking Act, that govern the committee, including the			
2152	committee's grant selection criteria.			
2153	[(2)] <u>(4)</u> The committee shall consist of:			
2154	(a) as chair, the executive director or an individual designated by the executive			
2155	director; and			
2156	(b) six members appointed by the governor to serve up to two consecutive, two-year			
2157	terms of office, including:			
2158	(i) four licensed health care professionals; and			
2159	(ii) two community advocates who are familiar with a medically underserved			
2160	population and with health care systems, where at least one is familiar with a rural medically			
2161	underserved population.			
2162	[(3)] (5) The executive director may remove a committee member:			
2163	(a) if the member is unable or unwilling to carry out the member's assigned			
2164	responsibilities; or			
2165	(b) for a rational reason.			
2166	[(4)] <u>(6)</u> A committee member may not receive compensation or benefits for the			
2167	member's service, except a committee member who is not an employee of the department			
2168	may receive per diem and travel expenses in accordance with:			
2169	(a) Section 63A-3-106;			
2170	(b) Section 63A-3-107; and			
2171	(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and			
2172	63A-3-107.			
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[26-18a-2.] <u>26B-1-411.</u> Creation and membership of Kurt Oscarson Children's

2175	Organ Tra	ansplant Co	oordinating	Committee ·	Expenses.
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- 2176 (1) There is created the Kurt Oscarson Children's Organ Transplant Coordinating Committee.
 - (2) The committee shall have five members representing the following:
- 2179 (a) the executive director [of the Department of Health or his] the executive director's designee;
- 2181 (b) two representatives from public or private agencies and organizations concerned 2182 with providing support and financial assistance to the children and families of children who 2183 need organ transplants; and
 - (c) two individuals who have had organ transplants, have children who have had organ transplants, who work with families or children who have had or are awaiting organ transplants, or community leaders or volunteers who have demonstrated an interest in working with families or children in need of organ transplants.
- 2188 (3) (a) The governor shall appoint the committee members and designate the chair from among the committee members.
 - (b) (i) Except as required by Subsection (3)(b)(ii), each member shall serve a four-year term.
 - (ii) Notwithstanding the requirements of Subsection (3)(b)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of the committee members are staggered so that approximately half of the committee is appointed every two years.
 - (4) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- 2203 (5) The [Department of Health] department shall provide support staff for the committee.

2206 [26-21-3.] <u>26B-1-412.</u> Health Facility Committee -- Members -- Terms --

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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2207	Organization Meetings.
2208	(1) (a) The committee shall consist of 12 members appointed by the governor in
2209	consultation with the executive director.
2210	(b) The appointed members shall be knowledgeable about health care facilities and
2211	issues.
2212	(2) The membership of the committee is:
2213	(a) one physician, licensed to practice medicine and surgery under Title 58, Chapter
2214	67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice
2215	Act, who is a graduate of a regularly chartered medical school;
2216	(b) one hospital administrator;
2217	(c) one hospital trustee;
2218	(d) one representative of a freestanding ambulatory surgical facility;
2219	(e) one representative of an ambulatory surgical facility that is affiliated with a
2220	hospital;
2221	(f) one representative of the nursing care facility industry;
2222	(g) one registered nurse, licensed to practice under Title 58, Chapter 31b, Nurse
2223	Practice Act;
2224	(h) one licensed architect or engineer with expertise in health care facilities;
2225	(i) one representative of assisted living facilities licensed under this chapter;
2226	(j) two consumers, one of whom has an interest in or expertise in geriatric care; and
2227	(k) one representative from either a home health care provider or a hospice provider.
2228	(3) (a) Except as required by Subsection (3)(b), members shall be appointed for a
2229	term of four years.
2230	(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
2231	time of appointment or reappointment, adjust the length of terms to ensure that the terms of
2232	committee members are staggered so that approximately half of the committee is appointed
2233	every two years.
2234	(c) When a vacancy occurs in the membership for any reason, the replacement shall
2235	be appointed for the unexpired term by the governor, giving consideration to
2236	recommendations made by the committee, with the consent of the Senate.

consecutive years, whichever is less. [However,]

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(d) (i) A member may not serve more than two consecutive full terms or 10

- 2239 <u>(ii) Notwithstanding Subsection (3)(d)(i),</u> a member may continue to serve as a 2240 member until the member is replaced.
- (e) The committee shall annually elect from [its] the committee's membership a chair and vice chair.
 - (f) The committee shall meet at least quarterly, or more frequently as determined by the chair or five members of the committee.
 - (g) Six members constitute a quorum. A vote of the majority of the members present constitutes action of the committee.

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[26-33a-104.] <u>26B-1-413.</u> <u>Health Data Committee --</u> Purpose, powers, and duties of the committee.

- (1) The purpose of the committee is to direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues.
- 2254 (2) The committee shall:
- 2255 (a) with the concurrence of the department and in accordance with Title 63G, Chapter 2256 3, Utah Administrative Rulemaking Act, develop and adopt by rule, following public hearing 2257 and comment, a health data plan that shall among its elements:
 - (i) identify the key health care issues, questions, and problems amenable to resolution or improvement through better data, more extensive or careful analysis, or improved dissemination of health data;
 - (ii) document existing health data activities in the state to collect, organize, or make available types of data pertinent to the needs identified in Subsection (2)(a)(i);
 - (iii) describe and prioritize the actions suitable for the committee to take in response to the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of needed data, and to encourage improvements in existing data collection, interpretation, and reporting activities, and indicate how those actions relate to the activities identified under Subsection (2)(a)(ii);
- 2268 (iv) detail the types of data needed for the committee's work, the intended data 2269 suppliers, and the form in which such data are to be supplied, noting the consideration given 2270 to the potential alternative sources and forms of such data and to the estimated cost to the

- individual suppliers as well as to the department of acquiring these data in the proposed 2271 2272 manner; the plan shall reasonably demonstrate that the committee has attempted to 2273 maximize cost-effectiveness in the data acquisition approaches selected;
- 2274 (v) describe the types and methods of validation to be performed to assure data 2275 validity and reliability;
 - (vi) explain the intended uses of and expected benefits to be derived from the data specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis methods; the benefits described shall demonstrably relate to one or more of the following:
 - (A) promoting quality health care;

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- (B) managing health care costs; or
- (C) improving access to health care services;
- 2282 (vii) describe the expected processes for interpretation and analysis of the data 2283 flowing to the committee; noting specifically the types of expertise and participation to be 2284 sought in those processes; and
 - (viii) describe the types of reports to be made available by the committee and the intended audiences and uses:
 - (b) have the authority to collect, validate, analyze, and present health data in accordance with the plan while protecting individual privacy through the use of a control number as the health data identifier:
 - (c) evaluate existing identification coding methods and, if necessary, require by rule adopted in accordance with Subsection (3), that health data suppliers use a uniform system for identification of patients, health care facilities, and health care providers on health data they submit under this chapter; and
 - (d) advise, consult, contract, and cooperate with any corporation, association, or other entity for the collection, analysis, processing, or reporting of health data identified by control number only in accordance with the plan.
 - (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee, with the concurrence of the department, may adopt rules to carry out the provisions of this chapter.
 - (4) (a) Except for data collection, analysis, and validation functions described in this section, nothing in this chapter shall be construed to authorize or permit the committee to perform regulatory functions which are delegated by law to other agencies of the state or

federal governments or to perform quality assurance or medical record audit functions that health care facilities, health care providers, or third party payors are required to conduct to comply with federal or state law.

- (b) The committee may not recommend or determine whether a health care provider, health care facility, third party payor, or self-funded employer is in compliance with federal or state laws including federal or state licensure, insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.
- (5) Nothing in this chapter shall be construed to require a data supplier to supply health data identifying a patient by name or describing detail on a patient beyond that needed to achieve the approved purposes included in the plan.
- (6) No request for health data shall be made of health care providers and other data suppliers until a plan for the use of such health data has been adopted.
- (7) If a proposed request for health data imposes unreasonable costs on a data supplier, due consideration shall be given by the committee to altering the request. If the request is not altered, the committee shall pay the costs incurred by the data supplier associated with satisfying the request that are demonstrated by the data supplier to be unreasonable.
- (8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may require any data supplier to submit fee schedules, maximum allowable costs, area prevailing costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other specific arrangements for reimbursement to a health care provider.
- (9) The committee may not publish any health data collected under Subsection (8) that would disclose specific terms of contracts, discounts, or fixed reimbursement arrangements, or other specific reimbursement arrangements between an individual provider and a specific payer.
- (10) Nothing in Subsection (8) shall prevent the committee from requiring the submission of health data on the reimbursements actually made to health care providers from any source of payment, including consumers.

[26-39-200.] <u>26B-1-414.</u> Child Care Center Licensing Committee.

(1) (a) The licensing committee shall be comprised of seven members appointed by the governor and approved by the Senate in accordance with this subsection.

(b) The governor shall appoint three members who: 2335 2336 (i) have at least five years of experience as an owner in or director of a for profit or not-for-profit center based child care; and 2337 2338 (ii) hold an active license as a child care center from the department to provide center 2339 based child care. 2340 (c) (i) The governor shall appoint one member to represent each of the following: 2341 (A) a parent with a child in center based child care; 2342 (B) a child development expert from the state system of higher education; 2343 (C) except as provided in Subsection (1)(e), a pediatrician licensed in the state; and 2344 (D) an architect licensed in the state. 2345 (ii) Except as provided in Subsection (1)(c)(i)(B), a member appointed under 2346 Subsection (1)(c)(i) may not be an employee of the state or a political subdivision of the 2347 state. 2348 (d) At least one member described in Subsection (1)(b) shall at the time of 2349 appointment reside in a county that is not a county of the first class. 2350 (e) For the appointment described in Subsection (1)(c)(i)(C), the governor may 2351 appoint a health care professional who specializes in pediatric health if: 2352 (i) the health care professional is licensed under: 2353 (A) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice nurse 2354 practitioner; or 2355 (B) Title 58, Chapter 70a, Utah Physician Assistant Act; and 2356 (ii) before appointing a health care professional under this Subsection (1)(e), the 2357 governor: (A) sends a notice to a professional physician organization in the state regarding the 2358 2359 opening for the appointment described in Subsection (1)(c)(i)(C); and 2360 (B) receives no applications from a pediatrician who is licensed in the state for the 2361 appointment described in Subsection (1)(c)(i)(C) within 90 days after the day on which the governor sends the notice described in Subsection (1)(e)(ii)(A). 2362 2363 (2) (a) Except as required by Subsection (2)(b), as terms of current members expire, 2364 the governor shall appoint each new member or reappointed member to a four-year term 2365 ending June 30.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the

- time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the licensing committee is appointed every two years.
- 2370 (c) Upon the expiration of the term of a member of the licensing committee, the member shall continue to hold office until a successor is appointed and qualified.
 - (d) A member may not serve more than two consecutive terms.
- 2373 (e) Members of the licensing committee shall annually select one member to serve as 2374 chair who shall establish the agenda for licensing committee meetings.
- 2375 (3) When a vacancy occurs in the membership for any reason, the governor, with the advice and consent of the Senate, shall appoint a replacement for the unexpired term.
 - (4) (a) The licensing committee shall meet at least every two months.
 - (b) The director may call additional meetings:
- 2379 (i) at the director's discretion;

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- (ii) upon the request of the chair; or
- 2381 (iii) upon the written request of three or more members.
- 2382 (5) Three members of the licensing committee constitute a quorum for the transaction of business.
- 2384 (6) A member of the licensing committee may not receive compensation or benefits 2385 for the member's service, but may receive per diem and travel expenses as allowed in:
 - (a) Section 63A-3-106;
- 2387 (b) Section 63A-3-107; and
- 2388 (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 2389 63A-3-107.

2391 [26-39-201.] 26B-1-415. Residential Child Care Licensing Advisory Committee.

- (1) (a) The advisory committee shall advise the department on rules made by the department under this chapter for residential child care.
- 2394 (b) The advisory committee shall be composed of the following nine members who shall be appointed by the executive director:
 - (i) two child care consumers;
 - (ii) three licensed residential child care providers;
- 2398 (iii) one certified residential child care provider;

2399	(iv) one individual with expertise in early childhood development; and
2400	(v) two health care providers.
2401	(2) (a) Members of the advisory committee shall be appointed for four-year terms,
2402	except for those members who have been appointed to complete an unexpired term.
2403	(b) Appointments and reappointments may be staggered so that 1/4 of the advisory
2404	committee changes each year.
2405	(c) The advisory committee shall annually elect a chair from its membership.
2406	(3) The advisory committee shall meet at least quarterly, or more frequently as
2407	determined by the executive director, the chair, or three or more members of the committee.
2408	(4) Five members constitute a quorum and a vote of the majority of the members
2409	present constitutes an action of the advisory committee.
2410	(5) A member of the advisory committee may not receive compensation or benefits
2411	for the member's service, but may receive per diem and travel expenses as allowed in:
2412	(a) Section 63A-3-106;
2413	(b) Section 63A-3-107; and
2414	(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and
2415	63A-3-107.
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2417	[26-40-104.] <u>26B-1-416.</u> Utah Children's Health Insurance Program Advisory
2418	Council.
2419	(1) (a) There is created a Utah Children's Health Insurance Program Advisory
2420	Council consisting of at least five and no more than eight members appointed by the
2421	executive director of the department.
2422	(b) The term of each appointment shall be three years.
2423	(c) The appointments shall be staggered at one-year intervals to ensure continuity of
2424	the advisory council.
2425	(2) The advisory council shall meet at least quarterly.
2426	(3) The membership of the advisory council shall include at least one representative
2427	from each of the following groups:
2428	(a) child health care providers;
2429	(b) ethnic populations other than American Indians;
2430	(c) American Indians;

(d) health and accident and health insurance providers; and 2431 (e) the general public. 2432 2433 (4) The advisory council shall advise the department on: 2434 (a) benefits design: 2435 (b) eligibility criteria; 2436 (c) outreach: 2437 (d) evaluation; and 2438 (e) special strategies for under-served populations. 2439 (5) A member may not receive compensation or benefits for the member's service, 2440 but may receive per diem and travel expenses in accordance with: 2441 (a) Section 63A-3-106; 2442 (b) Section 63A-3-107; and (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 2443 2444 63A-3-107. 2445 2446 [26-50-202.] 26B-1-417. Traumatic Brain Injury Advisory Committee --2447 Membership -- Time limit. 2448 (1) On or after July 1 of each year, the executive director may create a Traumatic 2449 Brain Injury Advisory Committee of not more than nine members. 2450 (2) The committee shall be composed of members of the community who are familiar 2451 with traumatic brain injury, its causes, diagnosis, treatment, rehabilitation, and support 2452 services, including: 2453 (a) persons with a traumatic brain injury; 2454 (b) family members of a person with a traumatic brain injury; 2455 (c) representatives of an association which advocates for persons with traumatic brain 2456 injuries; 2457 (d) specialists in a profession that works with brain injury patients; and 2458 (e) department representatives. 2459 (3) The department shall provide staff support to the committee. 2460 (4) (a) If a vacancy occurs in the committee membership for any reason, a 2461 replacement may be appointed for the unexpired term. 2462 (b) The committee shall elect a chairperson from the membership.

- (c) A majority of the committee constitutes a quorum at any meeting, and, if a quorum 2463 2464 exists, the action of the majority of members present shall be the action of the committee. (d) The committee may adopt bylaws governing the committee's activities. 2465 (e) A committee member may be removed by the executive director: 2466 2467 (i) if the member is unable or unwilling to carry out the member's assigned responsibilities; or 2468 2469 (ii) for good cause. 2470 (5) The committee shall comply with the procedures and requirements of: 2471 (a) Title 52, Chapter 4, Open and Public Meetings Act; and 2472 (b) Title 63G, Chapter 2, Government Records Access and Management Act. (6) A member may not receive compensation or benefits for the member's service, 2473 2474 but, at the executive director's discretion, may receive per diem and travel expenses in 2475 accordance with: 2476 (a) Section 63A-3-106; 2477 (b) Section 63A-3-107; and 2478 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107. 2479 2480 (7) Not later than November 30 of each year the committee shall provide a written report summarizing the activities of the committee to the executive director of the 2481 2482 department. 2483 (8) The committee shall cease to exist on December 31 of each year, unless the 2484 executive director determines it necessary to continue. 2485 2486 [26-54-103.] 26B-1-418. Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee -- Creation -- Membership --2487 2488 Terms -- Duties. 2489 (1) There is created a Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee. 2490 2491 (2) The advisory committee shall be composed of 11 members as follows:
- (a) the executive director, or the executive director's designee;
- 2493 (b) two survivors, or family members of a survivor, of a traumatic brain injury appointed by the governor;

- 2495 (c) two survivors, or family members of a survivor, of a traumatic spinal cord injury 2496 appointed by the governor;
- 2497 (d) one traumatic brain injury or spinal cord injury professional appointed by the 2498 governor who, at the time of appointment and throughout the professional's term on the 2499 committee, does not receive a financial benefit from the fund;
- 2500 (e) two parents of a child with a nonprogressive neurological condition appointed by 2501 the governor;
- 2502 (f) (i) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy 2503 Practice Act, with experience treating brain and spinal cord injuries, appointed by the 2504 governor; or
- (ii) an occupational therapist licensed under Title 58, Chapter 42a, Occupational 2505 2506 Therapy Practice Act, with experience treating brain and spinal cord injuries, appointed by 2507 the governor;
 - (g) a member of the House of Representatives appointed by the speaker of the House of Representatives; and
 - (h) a member of the Senate appointed by the president of the Senate.
- 2511 (3) (a) The term of advisory committee members shall be four years. If a vacancy 2512 occurs in the committee membership for any reason, a replacement shall be appointed for 2513 the unexpired term in the same manner as the original appointment.
 - (b) The committee shall elect a chairperson from the membership.
- 2515 (c) A majority of the committee constitutes a quorum at any meeting, and, if a quorum 2516 is present at an open meeting, the action of the majority of members shall be the action of 2517 the advisory committee.
 - (d) The terms of the advisory committee shall be staggered so that members appointed under Subsections (2)(b), (d), and (f) shall serve an initial two-year term and members appointed under Subsections (2)(c), (e), and (g) shall serve four-year terms.
- 2521 Thereafter, members appointed to the advisory committee shall serve four-year terms.
- 2522 (4) The advisory committee shall comply with the procedures and requirements of:
- (a) Title 52, Chapter 4, Open and Public Meetings Act: 2523
 - (b) Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (c) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (5) (a) A member who is not a legislator may not receive compensation or benefits for

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2527	the member's service, but, at the executive director's discretion, may receive per diem and
2528	travel expenses as allowed in:
2529	(i) Section 63A-3-106;
2530	(ii) Section 63A-3-107; and
2531	(iii) rules adopted by the Division of Finance according to Sections 63A-3-106 and
2532	63A-3-107.
2533	(b) Compensation and expenses of a member who is a legislator are governed by
2534	Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses
2535	(6) The advisory committee shall:
2536	(a) adopt rules and procedures in accordance with Title 63G, Chapter 3, Utah
2537	Administrative Rulemaking Act, that establish priorities and criteria for the advisory
2538	committee to follow in recommending distribution of money from the fund to assist qualified
2539	IRC 501(c)(3) charitable clinics, as defined in Sections 26-54-102 and 26-54-102.5;
2540	(b) identify, evaluate, and review the quality of care available to:
2541	(i) individuals with spinal cord and brain injuries through qualified IRC 501(c)(3)
2542	charitable clinics, as defined in Section 26-54-102; or
2543	(ii) children with nonprogressive neurological conditions through qualified IRC
2544	501(c)(3) charitable clinics, as defined in Section 26-54-102.5; and
2545	(c) explore, evaluate, and review other possible funding sources and make a
2546	recommendation to the Legislature regarding sources that would provide adequate funding
2547	for the advisory committee to accomplish its responsibilities under this section.
2548	(7) Operating expenses for the advisory committee, including the committee's staff,
2549	shall be paid for only with money from:
2550	(a) the Spinal Cord and Brain Injury Rehabilitation Fund;
2551	(b) the Pediatric Neuro-Rehabilitation Fund; or
2552	(c) both funds.
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2554	[26-46-103.] <u>26B-1-419.</u> <u>Utah Health Care Workforce Financial Assistance</u>
2555	Program Advisory committee Membership Compensation Duties.
2556	(1) There is created the Utah Health Care Workforce Financial Assistance Program
2557	Advisory Committee consisting of the following 13 members appointed by the executive
2558	director, eight of whom shall be residents of rural communities:

- 2559 (a) one rural representative of Utah Hospitals and Health Systems, nominated by the 2560 association;
- 2561 (b) two rural representatives of the Utah Medical Association, nominated by the 2562 association:
- 2563 (c) one representative of the Utah Academy of Physician Assistants, nominated by 2564 the association;
- 2565 (d) one representative of the Association for Utah Community Health, nominated by 2566 the association:
 - (e) one representative of the Utah Dental Association, nominated by the association;
- 2568 (f) one representative of mental health therapists, selected from nominees submitted by mental health therapist professional associations;
- 2570 (g) one representative of the Association of Local Health Officers, nominated by the 2571 association:
 - (h) one representative of a low-income advocacy group, nominated by a Utah health and human services coalition that represents underserved populations;
 - (i) one nursing program faculty member, nominated by the Statewide Deans and Directors Committee;
- 2576 (j) one administrator of a long-term care facility, nominated by the Utah Health Care 2577 Association:
 - (k) one nursing administrator, nominated by the Utah Nurses Association; and
 - (I) one geriatric professional who is:

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- 2580 (i) determined by the department to have adequate advanced training in geriatrics to 2581 prepare the person to provide specialized geriatric care within the scope of the person's 2582 profession; and
- 2583 (ii) nominated by a professional association for the profession of which the person is a member.
 - (2) An appointment to the committee shall be for a four-year term unless the member is appointed to complete an unexpired term. The executive director may also adjust the length of term at the time of appointment or reappointment so that approximately 1/2 the committee is appointed every two years. The executive director shall annually appoint a committee chair from among the members of the committee.
 - (3) The committee shall meet at the call of the chair, at least three members of the

- committee, or the executive director, but no less frequently than once each calendar year.
- 2592 (4) A majority of the members of the committee constitutes a quorum. The action of a majority of a quorum constitutes the action of the committee.
- 2594 (5) A member may not receive compensation or benefits for the member's service, 2595 but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
- 2597 (b) Section 63A-3-107; and

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- 2598 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 2599 63A-3-107.
- 2600 (6) The committee shall:
 - (a) make recommendations to the department for the development and modification of rules to administer the Utah Health Care Workforce Financial Assistance Program; and
 - (b) advise the department on the development of a needs assessment tool for identifying underserved areas.
- 2605 (7) As funding permits, the department shall provide staff and other administrative support to the committee.

[26-61-201.] <u>26B-1-420.</u> Cannabis Research Review Board.

- (1) There is created the Cannabis Research Review Board within the department.
- 2610 (2) The department shall appoint, in consultation with a professional association 2611 based in the state that represents physicians, seven members to the Cannabis Research 2612 Review Board as follows:
 - (a) three individuals who are medical research professionals; and
- (b) four physicians who are qualified medical providers.
- 2615 (3) The department shall ensure that at least one of the board members appointed 2616 under Subsection (2) is a member of the Controlled Substances Advisory Committee created 2617 in Section 58-38a-201.
- 2618 (4) (a) Four of the board members appointed under Subsection (2) shall serve an initial term of two years and three of the board members appointed under Subsection (2) shall serve an initial term of four years.
 - (b) Successor board members shall each serve a term of four years.
 - (c) A board member appointed to fill a vacancy on the board shall serve the

remainder of the term of the board member whose departure created the vacancy. 2623 2624 (5) The department may remove a board member without cause. 2625 (6) The board shall: (a) nominate a board member to serve as chairperson of the board by a majority vote 2626 2627 of the board members; and (b) meet as often as necessary to accomplish the duties assigned to the board under 2628 this chapter. 2629 (7) Each board member, including the chair, has one vote. 2630 2631 (8) (a) A majority of board members constitutes a quorum. 2632 (b) A vote of a majority of the quorum at any board meeting is necessary to take 2633 action on behalf of the board. 2634 (9) A board member may not receive compensation for the member's service on the board, but may, in accordance with rules adopted by the board in accordance with Title 63G, 2635 2636 Chapter 3, Utah Administrative Rulemaking Act, receive: 2637 (a) per diem at the rate established under Section 63A-3-106; and 2638 (b) travel expenses at the rate established under Section 63A-3-107. 2639 (10) If a board member appointed under Subsection (2)(b) does not meet the 2640 qualifications of Subsection (2)(b) before July 1, 2022: 2641 (a) the board member's seat is vacant; and 2642 (b) the department shall fill the vacancy in accordance with this section. 2643 2644 [26-61a-105.] <u>26B-1-421.</u> Compassionate Use Board. 2645 (1) (a) The department shall establish a Compassionate Use Board consisting of: 2646 (i) seven qualified medical providers that the executive director appoints and the Senate confirms: 2647 (A) who are knowledgeable about the medicinal use of cannabis; 2648 2649 (B) who are physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and 2650 2651 (C) whom the appropriate board certifies in the specialty of neurology, pain medicine and pain management, medical oncology, psychiatry, infectious disease, internal medicine, 2652 2653 pediatrics, or gastroenterology; and

(ii) as a nonvoting member and the chair of the Compassionate Use Board, the

- executive director or the director's designee. 2655
- 2656 (b) In appointing the seven qualified medical providers described in Subsection (1)(a), the executive director shall ensure that at least two have a board certification in pediatrics. 2657
- (2) (a) Of the members of the Compassionate Use Board that the executive director 2658 first appoints: 2659
 - (i) three shall serve an initial term of two years; and
 - (ii) the remaining members shall serve an initial term of four years.
- (b) After an initial term described in Subsection (2)(a) expires: 2662
- 2663 (i) each term is four years; and

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- (ii) each board member is eligible for reappointment.
- (c) A member of the Compassionate Use Board may serve until a successor is 2665 2666 appointed.
 - (3) Four members constitute a quorum of the Compassionate Use Board.
 - (4) A member of the Compassionate Use Board may receive:
- 2669 (a) notwithstanding Section 63A-3-106, compensation or benefits for the member's 2670 service: and
 - (b) travel expenses in accordance with Section 63A-3-107 and rules made by the Division of Finance in accordance with Section 63A-3-107.
 - (5) The Compassionate Use Board shall:
- 2674 (a) review and recommend for department approval a petition to the board regarding 2675 an individual described in Subsection 26-61a-201(2)(a), a minor described in Subsection 2676 26-61a-201(2)(c), or an individual who is not otherwise qualified to receive a medical 2677 cannabis card to obtain a medical cannabis card for compassionate use, for the standard or 2678 a reduced period of validity, if:
- 2679 (i) for an individual who is not otherwise qualified to receive a medical cannabis card, the individual's qualified medical provider is actively treating the individual for an intractable 2680 2681 condition that:
 - (A) substantially impairs the individual's quality of life; and
- (B) has not, in the qualified medical provider's professional opinion, adequately 2683 2684 responded to conventional treatments;
 - (ii) the qualified medical provider:
- (A) recommends that the individual or minor be allowed to use medical cannabis; and 2686

- (B) provides a letter, relevant treatment history, and notes or copies of progress notes 2687 2688 describing relevant treatment history including rationale for considering the use of medical cannabis; and 2689
 - (iii) the Compassionate Use Board determines that:
 - (A) the recommendation of the individual's qualified medical provider is justified; and
 - (B) based on available information, it may be in the best interests of the individual to allow the use of medical cannabis;
 - (b) review and approve or deny the use of a medical cannabis device for an individual described in Subsection 26-61a-201(2)(a)(i)(B) or a minor described in Subsection 26-61a-201(2)(c) if the individual's or minor's qualified medical provider recommends that the individual or minor be allowed to use a medical cannabis device to vaporize the medical cannabis treatment:
 - (c) unless no petitions are pending:

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- (i) meet to receive or review compassionate use petitions at least quarterly; and
- (ii) if there are more petitions than the board can receive or review during the board's regular schedule, as often as necessary:
- (d) except as provided in Subsection (6), complete a review of each petition and recommend to the department approval or denial of the applicant for qualification for a medical cannabis card within 90 days after the day on which the board received the petition:
 - (e) consult with the department regarding the criteria described in Subsection (6); and
- (f) report, before November 1 of each year, to the Health and Human Services Interim Committee:
- (i) the number of compassionate use recommendations the board issued during the past year; and
 - (ii) the types of conditions for which the board recommended compassionate use.
- (6) The department shall make rules, in consultation with the Compassionate Use Board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a process and criteria for a petition to the board to automatically qualify for expedited final review and approval or denial by the department in cases where, in the determination of the department and the board:
 - (a) time is of the essence;
 - (b) engaging the full review process would be unreasonable in light of the petitioner's

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2719	physical condition; and
2720	(c) sufficient factors are present regarding the petitioner's safety.
2721	(7) (a) (i) The department shall review:
2722	(A) any compassionate use for which the Compassionate Use Board recommends
2723	approval under Subsection (5)(d) to determine whether the board properly exercised the
2724	board's discretion under this section; and
2725	(B) any expedited petitions the department receives under the process described in
2726	Subsection (6).
2727	(ii) If the department determines that the Compassionate Use Board properly
2728	exercised the board's discretion in recommending approval under Subsection (5)(d) or that
2729	the expedited petition merits approval based on the criteria established in accordance with
2730	Subsection (6), the department shall:
2731	(A) issue the relevant medical cannabis card; and
2732	(B) provide for the renewal of the medical cannabis card in accordance with the
2733	recommendation of the qualified medical provider described in Subsection (5)(a).
2734	(b) (i) If the Compassionate Use Board recommends denial under Subsection (5)(d),
2735	the individual seeking to obtain a medical cannabis card may petition the department to
2736	review the board's decision.
2737	(ii) If the department determines that the Compassionate Use Board's
2738	recommendation for denial under Subsection (5)(d) was arbitrary or capricious:
2739	(A) the department shall notify the Compassionate Use Board of the department's
2740	determination; and
2741	(B) the board shall reconsider the Compassionate Use Board's refusal to recommend
2742	approval under this section.
2743	(c) In reviewing the Compassionate Use Board's recommendation for approval or
2744	denial under Subsection (5)(d) in accordance with this Subsection (7), the department shall
2745	presume the board properly exercised the board's discretion unless the department
2746	determines that the board's recommendation was arbitrary or capricious.
2747	(8) Any individually identifiable health information contained in a petition that the
2748	Compassionate Use Board or department receives under this section is a protected record in

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(9) The Compassionate Use Board shall annually report the board's activity to the

accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

2751	Cannabis	Research	Review	Board.

- 2753 [26-66-202.] 26B-1-422. Early Childhood Utah Advisory Council -- Duties.
- 2754 (1) The council shall serve as an entity dedicated to improving and coordinating the quality of programs and services for children in accordance with the Improving Head Start for School Readiness Act of 2007, 42 U.S.C. Sec. 9837b.
 - (2) The council shall advise the commission and, on or before August 1, annually provide to the commission:
 - (a) a statewide assessment concerning the availability of high-quality pre-kindergarten services for children from low-income households; and
 - (b) a statewide strategic report addressing the activities mandated by the Improving Head Start for School Readiness Act of 2007, 42 U.S.C. Sec. 9837b, including:
 - (i) identifying opportunities for and barriers to collaboration and coordination among federally-funded and state-funded child health and development, child care, and early childhood education programs and services, including collaboration and coordination among state agencies responsible for administering such programs;
 - (ii) evaluating the overall participation of children in existing federal, state, and local child care programs and early childhood health, development, family support, and education programs;
 - (iii) recommending statewide professional development and career advancement plans for early childhood educators and service providers in the state, including an analysis of the capacity and effectiveness of programs at two- and four-year public and private institutions of higher education that support the development of early childhood educators; and
 - (iv) recommending improvements to the state's early learning standards and high-quality comprehensive early learning standards.
 - (3) On or before August 1, 2020, and at least every five years thereafter, the council shall provide to the commission a statewide needs assessment concerning the quality and availability of early childhood education, health, and development programs and services for children in early childhood.

[26-46a-104.] <u>26B-1-423.</u> Rural Physician Loan Repayment Program Advisory

2783 Committee -- Membership -- Compensation -- Duties.

- 2784 (1) There is created the Rural Physician Loan Repayment Program Advisory
 2785 Committee consisting of the following eight members appointed by the executive director:
 - (a) two legislators whose districts include rural counties;
- (b) five administrators of rural hospitals nominated by an association representing
 Utah hospitals, no more than two of whom are employed by hospitals affiliated by ownership;
 and
- (c) a physician currently practicing in a rural county.
 - (2) An appointment to the committee shall be for a four-year term unless the member is appointed to complete an unexpired term. The executive director shall adjust the length of term at the time of appointment or reappointment so that approximately one-half of the committee is appointed every two years. The executive director shall annually appoint a committee chair from among the members of the committee.
 - (3) (a) The committee shall meet at the call of:
- 2797 (i) the chair;

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- (ii) at least three members of the committee; or
- 2799 (iii) the executive director.
- 2800 (b) The committee shall meet at least once each calendar year.
- 2801 (4) A majority of the members of the committee constitutes a quorum. The action of a majority of a quorum constitutes the action of the committee.
- 2803 (5) A member may not receive compensation or benefits for the member's service, 2804 but may receive per diem and travel expenses in accordance with:
- 2805 (a) Section 63A-3-106;
- 2806 (b) Section 63A-3-107; and
- 2807 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 2808 63A-3-107.
- 2809 (6) The committee shall make recommendations to the department for the development and modification of rules to administer the Rural Physician Loan Repayment Program.
- 2812 (7) As funding permits, the department shall provide staff and other administrative support to the committee.

2815	[26-67-202.] <u>26B-1-424.</u> Adult Autism Treatment Program Advisory Committee
2816	Membership Procedures Compensation Duties Expenses.
2817	(1) The Adult Autism Treatment Advisory Committee created in Section 26B-1-204
2818	shall consist of six members appointed by the governor to two-year terms as follows:
2819	(a) one individual who:
2820	(i) has a doctorate degree in psychology;
2821	(ii) is a licensed behavior analyst practicing in the state; and
2822	(iii) has treated adults with an autism spectrum disorder for at least three years;
2823	(b) one individual who is:
2824	(i) employed by the department; and
2825	(ii) has professional experience with the treatment of autism spectrum disorder;
2826	(c) three individuals who have firsthand experience with autism spectrum disorders
2827	and the effects, diagnosis, treatment, and rehabilitation of autism spectrum disorders,
2828	including:
2829	(i) family members of an adult with an autism spectrum disorder;
2830	(ii) representatives of an association that advocates for adults with an autism
2831	spectrum disorder; and
2832	(iii) specialists or professionals who work with adults with an autism spectrum
2833	disorder; and
2834	(d) one individual who is:
2835	(i) a health insurance professional;
2836	(ii) holds a Doctor of Medicine or Doctor of Philosophy degree, with professional
2837	experience relating to the treatment of autism spectrum disorder; and
2838	(iii) has a knowledge of autism benefits and therapy that are typically covered by the
2839	health insurance industry.
2840	(2) (a) Notwithstanding Subsection (1), the governor shall, at the time of appointment
2841	or reappointment, adjust the length of terms to ensure the terms of members are staggered
2842	so that approximately half of the advisory committee is appointed every year.
2843	(b) If a vacancy occurs in the membership of the advisory committee, the governor
2844	may appoint a replacement for the unexpired term.
2845	(3) (a) The advisory committee shall annually elect a chair from its membership.

(b) A majority of the advisory committee constitutes a quorum at any meeting and, if a

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	Working Brown 1 or Brooksolor or one one
2847	quorum exists, the action of the majority of members present is the action of the advisory
2848	committee.
2849	(4) The advisory committee shall meet as necessary to:
2850	(a) advise the department regarding implementation of the program;
2851	(b) make recommendations to the department and the Legislature for improving the
2852	program; and
2853	(c) before October 1 each year, provide a written report of the advisory committee's
2854	activities and recommendations to:
2855	(i) the executive director;
2856	(ii) the Health and Human Services Interim Committee; and
2857	(iii) the Social Services Appropriations Subcommittee.
2858	(5) The advisory committee shall comply with the procedures and requirements of:
2859	(a) Title 52, Chapter 4, Open and Public Meetings Act; and
2860	(b) Title 63G, Chapter 2, Government Records Access and Management Act.
2861	(6) A member may not receive compensation or benefits for the member's service,
2862	but may receive per diem and travel expenses in accordance with:
2863	(a) Section 63A-3-106;
2864	(b) Section 63A-3-107; and
2865	(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
2866	63A-3-107.
2867	(7) (a) The department shall staff the advisory committee.
2868	(b) Expenses of the advisory committee, including the cost of advisory committee
2869	staff if approved by the executive director, may be paid only with funds from the Adult Autism
2870	Treatment Account.
2871	
2872	[26-69-201.] <u>26B-1-425.</u> Utah Health Workforce Advisory Council creation and
2873	membership.
2874	(1) There is created within the department the Utah Health Workforce Advisory
2875	Council.
2876	(2) The council shall be comprised of at least 14 but not more than 19 members.
2877	(3) The following are members of the council:

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(a) the executive director or that individual's designee;

- (b) the executive director of the Department of Workforce Services or that individual's 2879 2880 designee;
- 2881 (c) the commissioner of higher education of the Utah System of Higher Education or 2882 that individual's designee;
- 2883 (d) the state superintendent of the State Board of Education or that individual's 2884 designee:
 - (e) the executive director of the Department of Commerce or that individual's designee:
 - (f) the director of the Division of Multicultural Affairs or that individual's designee;
 - (g) the director of the Utah Substance Use and Mental Advisory Council or that individual's designee;
 - (h) the chair of the Utah Indian Health Advisory Board; and
 - (i) the chair of the Utah Medical Education Council created in Section 26-69-402.
 - (4) The executive director shall appoint at least five but not more than ten additional members that represent diverse perspectives regarding Utah's health workforce.
 - (5) (a) A member appointed by the executive director under Subsection (4) shall serve a four-year term.
 - (b) Notwithstanding Subsection (5)(a) for the initial appointments of members described in Subsection (4) the executive director shall appoint at least three but not more than five members to a two-year appointment to ensure that approximately half of the members appointed by the executive director rotate every two years.
 - (6) The executive director or the executive director's designee shall chair the council.

[62A-1-107.] 26B-1-426. Board of Aging and Adult Services -- Members, appointment, terms, vacancies, chairperson, compensation, meetings, quorum.

- (1) The Board of Aging and Adult Services created in Section 26B-1-204 shall have seven members who are appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
- (2) (a) Except as required by Subsection (2)(b), each member shall be appointed for a term of four years, and is eligible for one reappointment.
- 2909 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the 2910 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

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board members are staggered so that approximately half of the board is appointed every two years.

- 2913 (c) Board members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 90 days after the formal expiration of a term.
- 2916 (d) When a vacancy occurs in the membership for any reason, the replacement shall 2917 be appointed for the unexpired term.
- 2918 (3) (a) No more than four members of the board may be from the same political party.
- 2920 (b) The board shall have diversity of gender, ethnicity, and culture; and members 2921 shall be chosen on the basis of their active interest, experience, and demonstrated ability to 2922 deal with issues related to the Board of Aging and Adult Services.
- 2923 (4) (a) The board shall annually elect a chairperson from the board's membership.
- 2924 (b) The board shall hold meetings at least once every three months. Within 2925 budgetary constraints, meetings may be held from time to time on the call of the chairperson 2926 or of the majority of the members of the board.
- 2927 (c) Four members of the board are necessary to constitute a quorum at any meeting, 2928 and, if a quorum exists, the action of the majority of members present shall be the action of 2929 the board.
- 2930 (5) A member may not receive compensation or benefits for the member's service, 2931 but, at the executive director's discretion, may receive per diem and travel expenses in 2932 accordance with:
- 2933 (a) Section 63A-3-106;
- 2934 (b) Section 63A-3-107; and
- 2935 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 2936 63A-3-107.
- 2937 (6) (a) The board shall adopt bylaws governing its activities. [Bylaws]
- 2938 (b) The bylaws described in Subsection (6)(a) shall include procedures for removal 2939 of a board member who is unable or unwilling to fulfill the requirements of the board 2940 member's appointment.
- 2941 (7) The board has program policymaking authority for the division over which the 2942 board presides.

2943	(8) A member of the board shall comply with the conflict of interest provisions
2944	described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.
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2946	[62A-1-121.] <u>26B-1-427.</u> <u>Alcohol Abuse Tracking Committee</u> Tracking
2947	effects of abuse of alcoholic products.
2948	(1) There is created a committee within the department known as the ["]Alcohol
2949	Abuse Tracking Committee["] that consists of:
2950	(a) the executive director or the executive director's designee;
2951	[(b) the executive director of the Department of Health or that executive director's
2952	designee;]
2953	[(c)] <u>(b)</u> the commissioner of the Department of Public Safety or the commissioner's
2954	designee;
2955	[(d)] <u>(c)</u> the director of the Department of Alcoholic Beverage Services or that
2956	director's designee;
2957	[(e)] <u>(d)</u> the executive director of the Department of Workforce Services or that
2958	executive director's designee;
2959	[(f)] (e) the chair of the Utah Substance Use and Mental Health Advisory Council or
2960	the chair's designee;
2961	[(g)] (f) the state court administrator or the state court administrator's designee; and
2962	[(h)] (g) the director of the Division of Technology Services or that director's
2963	designee.
2964	(2) The executive director or the executive director's designee shall chair the
2965	committee.
2966	(3) (a) Four members of the committee constitute a quorum.
2967	(b) A vote of the majority of the committee members present when a quorum is
2968	present is an action of the committee.
2969	(4) The committee shall meet at the call of the chair, except that the chair shall call a
2970	meeting at least twice a year:
2971	(a) with one meeting held each year to develop the report required under Subsection
2972	(7); and

(5) The committee may adopt additional procedures or requirements for:

(b) with one meeting held to review and finalize the report before the report is issued.

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2975	(a) voting, when there is a tie of the committee members;
2976	(b) how meetings are to be called; and
2977	(c) the frequency of meetings.
2978	(6) The committee shall establish a process to collect for each calendar year the
2979	following information:
2980	(a) the number of individuals statewide who are convicted of, plead guilty to, plead no
2981	contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a
2982	violation related to underage drinking of alcohol;
2983	(b) the number of individuals statewide who are convicted of, plead guilty to, plead no
2984	contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a
2985	violation related to driving under the influence of alcohol;
2986	(c) the number of violations statewide of Title 32B, Alcoholic Beverage Control Act,
2987	related to over-serving or over-consumption of an alcoholic product;
2988	(d) the cost of social services provided by the state related to abuse of alcohol,
2989	including services provided by the Division of Child and Family Services;
2990	(e) the location where the alcoholic products that result in the violations or costs
2991	described in Subsections (6)(a) through (d) are obtained; and
2992	(f) any information the committee determines can be collected and relates to the
2993	abuse of alcoholic products.
2994	(7) The committee shall report the information collected under Subsection (6)
2995	annually to the governor and the Legislature by no later than the July 1 immediately following
2996	the calendar year for which the information is collected.
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2998	[26-7-10.] <u>26B-7-428.</u> Youth Electronic Cigarette, Marijuana, and Other Drug
2999	Prevention Program.
3000	(1) As used in this section:
3001	(a) "Committee" means the Youth Electronic Cigarette, Marijuana, and Other Drug
3002	Prevention Committee created in Section 26B-1-204.
3003	(b) "Program" means the Youth Electronic Cigarette, Marijuana, and Other Drug

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Prevention Program created in this section.

Marijuana, and Other Drug Prevention Program.

(2) (a) There is created within the department the Youth Electronic Cigarette,

3007 (b) In consultation with the committee, the department shall: 3008 (i) establish guidelines for the use of funds appropriated to the program; (ii) ensure that guidelines developed under Subsection (2)(b)(i) are evidence-based 3009 3010 and appropriate for the population targeted by the program; and 3011 (iii) subject to appropriations from the Legislature, fund statewide initiatives to prevent use of electronic cigarettes, nicotine products, marijuana, and other drugs by youth. 3012 3013 (3) (a) The committee shall advise the department on: 3014 (i) preventing use of electronic cigarettes, marijuana, and other drugs by youth in the 3015 state; 3016 (ii) developing the guidelines described in Subsection (2)(b)(i); and 3017 (iii) implementing the provisions of the program. 3018 (b) The executive director shall: (i) appoint members of the committee; and 3019 3020 (ii) consult with the Utah Substance Use and Mental Health Advisory Council created 3021 in Section 63M-7-301 when making the appointments under Subsection (3)(b)(i). 3022 (c) The committee shall include, at a minimum: 3023 (i) the executive director of a local health department as defined in Section 3024 26A-1-102, or the local health department executive director's designee; 3025 (ii) one designee from the department: 3026 (iii) one representative from the Department of Public Safety; 3027 (iv) one representative from the behavioral health community; and 3028 (v) one representative from the education community. 3029 (d) A member of the committee may not receive compensation or benefits for the 3030 member's service on the committee, but may receive per diem and travel expenses in 3031 accordance with: 3032 (i) Section 63A-3-106; 3033 (ii) Section 63A-3-107; and (iii) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107. 3034 3035 (e) The department shall provide staff support to the committee. 3036 (4) On or before October 31 of each year, the department shall report to: 3037 (a) the Health and Human Services Interim Committee regarding: (i) the use of funds appropriated to the program; 3038

3039	(ii) the impact and results of the program, including the effectiveness of each program
3040	funded under Subsection (2)(b)(iii), during the previous fiscal year;
3041	(iii) a summary of the impacts and results on reducing youth use of electronic
3042	cigarettes and nicotine products by entities represented by members of the committee,
3043	including those entities who receive funding through the Electronic Cigarette Substance and
3044	Nicotine Product Tax Restricted Account created in Section 59-14-807; and
3045	(iv) any recommendations for legislation; and
3046	(b) the Utah Substance Use and Mental Health Advisory Council created in Section
3047	63M-7-301, regarding:
3048	(i) the effectiveness of each program funded under Subsection (2)(b)(iii) in preventing
3049	youth use of electronic cigarettes, nicotine products, marijuana, and other drugs; and
3050	(ii) any collaborative efforts and partnerships established by the program with public
3051	and private entities to prevent youth use of electronic cigarettes, marijuana, and other drugs.
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3053	[62A-5-202.5.] <u>26B-1-429.</u> Utah State Developmental Center Board Creation
3054	Membership Duties Powers.
3055	(1) There is created the Utah State Developmental Center Board within the
3056	Department of Human Services.
3057	(2) The board is composed of nine members as follows:
3058	(a) the director of the division or the director's designee;
3059	(b) the superintendent of the developmental center or the superintendent's designee;
3060	(c) the executive director [of the Department of Human Services] or the executive
3061	director's designee;
3062	(d) a resident of the developmental center selected by the superintendent; and
3063	(e) five members appointed by the governor with the advice and consent of the
3064	Senate as follows:
3065	(i) three members of the general public; and
3066	(ii) two members who are parents or guardians of individuals who receive services at
3067	the developmental center.
3068	(3) In making appointments to the board, the governor shall ensure that:
3069	(a) no more than three members have immediate family residing at the

developmental center; and

- 3071 (b) members represent a variety of geographic areas and economic interests of the 3072 state.
- 3073 (4) (a) The governor shall appoint each member described in Subsection (2)(e) for a 3074 term of four years.
- 3075 (b) An appointed member may not serve more than two full consecutive terms unless 3076 the governor determines that an additional term is in the best interest of the state.
- 3077 (c) Notwithstanding the requirements of Subsections (4)(a) and (b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of appointed members are staggered so that approximately half of the appointed members are appointed every two years.
- 3081 (d) Appointed members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 120 days after the formal expiration of a term.
- 3084 (e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
 - (5) (a) The director shall serve as the chair.
 - (b) The board shall appoint a member to serve as vice chair.
 - (c) The board shall hold meetings quarterly or as needed.
 - (d) Five members are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.
 - (e) The chair shall be a non-voting member except that the chair may vote to break a tie vote between the voting members.
 - (6) An appointed member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and

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- 3098 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 3099 63A-3-107.
 - (7) (a) The board shall adopt bylaws governing the board's activities.
- 3101 (b) Bylaws shall include procedures for removal of a member who is unable or unwilling to fulfill the requirements of the member's appointment.

3103	(8) The board shall:
3104	(a) act for the benefit of the developmental center and the division;
3105	(b) advise and assist the division with the division's functions, operations, and duties
3106	related to the developmental center, described in Sections 62A-5-102, 62A-5-103,
3107	62A-5-201, 62A-5-203, and 62A-5-206;
3108	(c) administer the Utah State Developmental Center Miscellaneous Donation Fund,
3109	as described in Section 62A-5-206.5;
3110	(d) administer the Utah State Developmental Center Land Fund, as described in
3111	Section 62A-5-206.6;
3112	(e) approve the sale, lease, or other disposition of real property or water rights
3113	associated with the developmental center, as described in Subsection 62A-5-206.6(2); and
3114	(f) within 21 days after the day on which the board receives the notice required unde
3115	Subsection 10-2-419(3)(c), provide a written opinion regarding the proposed boundary
3116	adjustment to:
3117	(i) the director of the Division of Facilities and Construction Management; and
3118	(ii) the Legislative Management Committee.
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3120	[62A-5a-103.] <u>26B-1-430.</u> Coordinating Council for Persons with Disabilities
3121	Creation Membership Expenses.
3122	(1) There is created the Coordinating Council for Persons with Disabilities.
3123	(2) The council shall consist of:
3124	(a) the director of the Division of Services for People with Disabilities within the
3125	[Department of Human Services] department, or the director's designee;
3126	(b) the director of family health services programs, appointed under Section 26-10-3,
3127	or the director's designee;
3128	(c) the director of the Utah State Office of Rehabilitation created in Section
3129	35A-1-202, or the director's designee;
3130	(d) the state director of special education, or the director's designee;
3131	(e) the director of the Division of Health Care Financing within the [Department of
3132	Health] department, or the director's designee;
3133	(f) the director of the [Division] Office of Substance Abuse and Mental Health within
3134	the [Department of Human Services] department, or the director's designee;

- (g) the superintendent of Schools for the Deaf and the Blind, or the superintendent's 3135 3136 designee; and 3137 (h) a person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities, appointed by the members listed in Subsections (2)(a) 3138 3139 through (g). 3140 (3) (a) The council shall annually elect a chair from its membership. 3141 (b) Five members of the council are a quorum. 3142 (4) A member may not receive compensation or benefits for the member's service. 3143 but may receive per diem and travel expenses in accordance with: 3144 (a) Section 63A-3-106; 3145 (b) Section 63A-3-107; and 3146 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107. 3147 3148 [62A-15-605.] 26B-1-431. Forensic Mental Health Coordinating Council --3149 3150 Establishment and purpose. 3151 (1) There is established the Forensic Mental Health Coordinating Council composed 3152 of the following members: 3153 (a) the director of the [Division] Office of Substance Abuse and Mental Health or the 3154 director's appointee; 3155 (b) the superintendent of the state hospital or the superintendent's appointee; 3156 (c) the executive director of the Department of Corrections or the executive director's 3157 appointee; (d) a member of the Board of Pardons and Parole or its appointee; 3158 3159 (e) the attorney general or the attorney general's appointee; 3160 (f) the director of the Division of Services for People with Disabilities or the director's 3161 appointee; (g) the director of the Division of Juvenile Justice Services or the director's appointee; 3162 3163 (h) the director of the Commission on Criminal and Juvenile Justice or the director's 3164 appointee; 3165 (i) the state court administrator or the administrator's appointee;
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(i) the state juvenile court administrator or the administrator's appointee;

3167	(k) a representative from a local mental health authority or an organization, excluding
3168	the state hospital that provides mental health services under contract with the [Division]
3169	Office of Substance Abuse and Mental Health or a local mental health authority, as
3170	appointed by the director of the division;

- (I) the executive director of the Utah Developmental Disabilities Council or the director's appointee; and
- (m) other individuals, including individuals from appropriate advocacy organizations with an interest in the mission described in Subsection (3), as appointed by the members described in Subsections (1)(a) through (I).
- (2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- 3178 (a) Section 63A-3-106;

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- (b) Section 63A-3-107; and
- 3180 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 3181 63A-3-107.
 - (3) The purpose of the Forensic Mental Health Coordinating Council is to:
- 3183 (a) advise the director regarding the state hospital admissions policy for individuals in 3184 the custody of the Department of Corrections;
 - (b) develop policies for coordination between the division and the Department of Corrections;
 - (c) advise the executive director of the Department of Corrections regarding department policy related to the care of individuals in the custody of the Department of Corrections who are mentally ill;
 - (d) promote communication between and coordination among all agencies dealing with individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;
 - (e) study, evaluate, and recommend changes to laws and procedures relating to individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;
 - (f) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;

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3199	(g) promote judicial education relating to individuals with an intellectual disability or
3200	mental illness who become involved in the civil commitment system or in the criminal or
3201	juvenile justice system; and
3202	(h) in consultation with the Utah Substance Abuse Advisory Council created in
3203	Section 63M-7-301, study the long-term need for adult patient beds at the state hospital,
3204	including:
3205	(i) the total number of beds currently in use in the adult general psychiatric unit of the
3206	state hospital;
3207	(ii) the current bed capacity at the state hospital;
3208	(iii) the projected total number of beds needed in the adult general psychiatric unit of
3209	the state hospital over the next three, five, and 10 years based on:
3210	(A) the state's current and projected population growth;
3211	(B) current access to mental health resources in the community; and
3212	(C) any other factors the Forensic Mental Health Coordinating Council finds relevant
3213	to projecting the total number of beds; and
3214	(iv) the cost associated with the projected total number of beds described in
3215	Subsection (3)(h)(iii).
3216	(4) The Forensic Mental Health Coordinating Council shall report the results of the
3217	study described in Subsection (3)(h) and any recommended changes to laws or procedures
3218	based on the results to the Health and Human Services Interim Committee before November
3219	30 of each year.
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3221	[62A-15-1902.] <u>26B-1-432.</u> Mental Health Crisis Intervention Council Creation
3222	Membership Meetings Compensation Staff.
3223	(1) There is created, within the division, the Mental Health Crisis Intervention Council.
3224	(2) The council comprises the following members:
3225	(a) the director or the director's designee;
3226	(b) two members representing statewide mental health advocacy organizations,
3227	appointed by the director;

by the director;

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(c) an individual who has experienced mental illness, appointed by the director;

(d) a family member of an individual who has experienced mental illness, appointed

(e) a representative of an urban local mental health authority, appointed by the 3231 3232 director: 3233 (f) a representative of a rural local mental health authority, appointed by the director; 3234 (g) a representative of the Utah Chiefs of Police Association from an urban area, 3235 appointed by the director based upon a recommendation from the association; 3236 (h) a representative of the Utah Chiefs of Police Association from a rural area, 3237 appointed by the director based upon a recommendation from the association; 3238 (i) a representative of the Utah Sheriffs' Association from an urban area, appointed by 3239 the director based upon a recommendation from the association; 3240 (i) a representative of the Utah Sheriffs' Association from a rural area, appointed by 3241 the director based upon a recommendation from the association; 3242 (k) the commissioner of the Department of Public Safety or the commissioner's 3243 designee; 3244 (I) the executive director of the Department of Corrections or the executive director's 3245 designee; and 3246 (m) other individuals, appointed by the director, with knowledge and experience that 3247 would be useful to the council. 3248 (3) (a) If a vacancy occurs on the council, the director shall appoint a replacement 3249 member. 3250 (b) The director may remove a member for cause, including failure to regularly attend 3251 meetings. 3252 (4) (a) The council shall meet when a meeting is called by the director, the chair, or 3253 upon a request of a majority of the council members. 3254 (b) A majority of the council members appointed constitutes a quorum and a 3255 two-thirds majority of a quorum present constitutes action of the council. 3256 (c) The council shall appoint a chair from among the council's members upon a 3257 two-thirds majority vote of a quorum. (5) A member of the council may not receive compensation or benefits for the 3258 member's service, but may receive per diem and travel expenses in accordance with: 3259 3260 (a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and

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3263	63A-3-107.
3264	(6) The division shall provide staff support to the council.
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3266	Part X. Fatality Review.
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3268	[62A-16-102.] <u>26B-1-501.</u> Definitions.
3269	As used in this part:
3270	(1) "Abuse" means the same as that term is defined in Section 80-1-102.
3271	(2) "Child" means the same as that term is defined in Section 80-1-102.
3272	(3) "Committee" means a fatality review committee that is formed under Section
3273	62A-16-202 or 62A-16-203.
3274	(4) "Dependency" means the same as that term is defined in Section 80-1-102.
3275	(5) "Formal review" means a review of a death or a near fatality that is ordered under
3276	Subsection 62A-16-201(6).
3277	(6) "Near fatality" means alleged abuse or neglect that, as certified by a physician,
3278	places a child in serious or critical condition.
3279	(7) "Qualified individual" means an individual who:
3280	(a) at the time that the individual dies, is a resident of a facility or program that is
3281	owned or operated by the department or a division of the department;
3282	(b) (i) is in the custody of the department or a division of the department; and
3283	(ii) is placed in a residential placement by the department or a division of the
3284	department;
3285	(c) at the time that the individual dies, has an open case for the receipt of child
3286	welfare services, including:
3287	(i) an investigation for abuse, neglect, or dependency;
3288	(ii) foster care;
3289	(iii) in-home services; or
3290	(iv) substitute care;
3291	(d) had an open case for the receipt of child welfare services within one year before
3292	the day on which the individual dies;
3293	(e) was the subject of an accepted referral received by Adult Protective Services

within one year before the day on which the individual dies, if:

3295	(i) the department or a division of the department is aware of the death; and
3296	(ii) the death is reported as a homicide, suicide, or an undetermined cause;
3297	(f) received services from, or under the direction of, the Division of Services for
3298	People with Disabilities within one year before the day on which the individual dies, unless
3299	the individual:
3300	(i) lived in the individual's home at the time of death; and
3301	(ii) the director of the Office of Quality and Design determines that the death was not
3302	in any way related to services that were provided by, or under the direction of, the
3303	department or a division of the department;
3304	(g) dies within 60 days after the day on which the individual is discharged from the
3305	Utah State Hospital, if the department is aware of the death;
3306	(h) is a child who:
3307	(i) suffers a near fatality; and
3308	(ii) is the subject of an open case for the receipt of child welfare services within one
3309	year before the day on which the child suffered the near fatality, including:
3310	(A) an investigation for abuse, neglect, or dependency;
3311	(B) foster care;
3312	(C) in-home services; or
3313	(D) substitute care; or
3314	(i) is designated as a qualified individual by the executive director.
3315	(8) "Neglect" means the same as that term is defined in Section 80-1-102.
3316	(9) "Substitute care" means the same as that term is defined in Section 80-1-102.
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3318	[62A-16-201.] <u>26B-1-502.</u> Initial review.
3319	(1) Within seven days after the day on which the department knows that a qualified
3320	individual has died or is an individual described in Subsection 62A-16-102(7)(h), a person
3321	designated by the department shall:
3322	(a) (i) for a death, complete a deceased client report form, created by the department;
3323	or
3324	(ii) for an individual described in Subsection 62A-16-102(7)(h), complete a near
3325	fatality client report form, created by the department; and
3326	(b) forward the completed client report form to the director of the office or division that

3327 has jurisdiction over the region or facility.

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- 3328 (2) The director of the office or division described in Subsection (1) shall, upon receipt 3329 of a near fatality client report form or a deceased client report form, immediately provide a 3330 copy of the form to:
 - (a) the executive director; and
 - (b) the fatality review coordinator or the fatality review coordinator's designee.
- 3333 (3) Within 10 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives a copy of the near fatality client report form or the deceased client report form, the fatality review coordinator or the fatality review coordinator's designee shall request a copy of all relevant department case records regarding the individual who is the subject of the client report form.
 - (4) Each person who receives a request for a record described in Subsection (3) shall provide a copy of the record to the fatality review coordinator or the fatality review coordinator's designee, by a secure method, within seven days after the day on which the request is made.
 - (5) Within 30 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives the case records requested under Subsection (3), the fatality review coordinator, or the fatality review coordinator's designee, shall:
 - (a) review the client report form, the case files, and other relevant information received by the fatality review coordinator; and
 - (b) make a recommendation to the director of the Office of Quality and Design regarding whether a formal review of the death or near fatality should be conducted.
 - (6) (a) In accordance with Subsection (6)(b), within seven days after the day on which the fatality review coordinator or the fatality review coordinator's designee makes the recommendation described in Subsection (5)(b), the director of the Office of Quality and Design or the director's designee shall determine whether to order that a review of the death or near fatality be conducted.
 - (b) The director of the Office of Quality and Design or the director's designee shall order that a formal review of the death or near fatality be conducted if:
 - (i) at the time of the near fatality or the death, the qualified individual is:
 - (A) an individual described in Subsection 62A-16-102(6)(a) or (b), unless:
 - (I) the near fatality or the death is due to a natural cause; or

3359	(II) the director of the Office of Quality and Design or the director's designee
3360	determines that the near fatality or the death was not in any way related to services that were
3361	provided by, or under the direction of, the department or a division of the department; or
3362	(B) a child in foster care or substitute care, unless the near fatality or the death is due
3363	to:
3364	(I) a natural cause; or
3365	(II) an accident;
3366	(ii) it appears, based on the information provided to the director of the Office of
3367	Quality and Design or the director's designee, that:
3368	(A) a provision of law, rule, policy, or procedure relating to the qualified individual or
3369	the individual's family may not have been complied with;
3370	(B) the near fatality or the fatality was not responded to properly;
3371	(C) a law, rule, policy, or procedure may need to be changed; or
3372	(D) additional training is needed;
3373	(iii) (A) the death is caused by suicide; or
3374	(B) the near fatality is caused by attempted suicide; or
3375	(iv) the director of the Office of Quality and Design or the director's designee
3376	determines that another reason exists to order that a review of the near fatality or the death
3377	be conducted.
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3379	[62A-16-202.] <u>26B-1-503.</u> Fatality review committee for a qualified individual
3380	who was not a resident of the Utah State Hospital or the Utah State Developmental
3381	Center.
3382	(1) Except for a fatality review committee described in Section 62A-16-203, the fatality
3383	review coordinator shall organize a fatality review committee for each formal review.
3384	(2) Except as provided in Subsection (5), a committee described in Subsection (1):
3385	(a) shall include the following members:
3386	(i) the department's fatality review coordinator, who shall designate a member of the
3387	committee to serve as chair of the committee;
3388	(ii) a member of the board, if there is a board, of the relevant division or office;
3389	(iii) the attorney general or the attorney general's designee;

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(iv) (A) a member of the management staff of the relevant division or office; or

3391	(B) a person who is a supervisor, or a higher level position, from a region that did not
3392	have jurisdiction over the qualified individual; and
3393	(v) a member of the department's risk management services; and
3394	(b) may include the following members:
3395	(i) a health care professional;
3396	(ii) a law enforcement officer; or
3397	(iii) a representative of the Office of Public Guardian.
3398	(3) If a death that is subject to formal review involves a qualified individual described
3399	in Subsection 62A-16-102(7)(c), (d), or (h), the committee may also include:
3400	(a) a health care professional;
3401	(b) a law enforcement officer;
3402	(c) the director of the Office of Guardian ad Litem;
3403	(d) an employee of the division who may be able to provide information or expertise
3404	that would be helpful to the formal review; or
3405	(e) a professional whose knowledge or expertise may significantly contribute to the
3406	formal review.
3407	(4) A committee described in Subsection (1) may also include a person whose
3408	knowledge or expertise may significantly contribute to the formal review.
3409	(5) A committee described in this section may not include an individual who was
3410	involved in, or who supervises a person who was involved in, the near fatality or the death.
3411	(6) Each member of a committee described in this section who is not an employee or
3412	the department shall sign a form, created by the department, indicating that the member
3413	agrees to:
3414	(a) keep all information relating to the formal review confidential; and
3415	(b) not release any information relating to a formal review, unless required or
3416	permitted by law to release the information.
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3418	[62A-16-203.] <u>26B-1-504.</u> Fatality review committees for a resident of the Utah
3419	State Hospital or the Utah State Developmental Center.
3420	(1) If a qualified individual who is the subject of a formal review was a resident of the
3421	Utah State Hospital or the Utah State Developmental Center, the fatality review coordinator
3422	of that facility shall organize a fatality review committee to review the near fatality or the

3423	death.
3424	(2) Except as provided in Subsection (4), a committee described in Subsection (1)
3425	shall include the following members:
3426	(a) the fatality review coordinator for the facility, who shall serve as chair of the
3427	committee;
3428	(b) a member of the management staff of the facility;
3429	(c) a supervisor of a unit other than the one in which the qualified individual resided;
3430	(d) a physician;
3431	(e) a representative from the administration of the division that oversees the facility;
3432	(f) the department's fatality review coordinator;
3433	(g) a member of the department's risk management services; and
3434	(h) a citizen who is not an employee of the department.
3435	(3) A committee described in Subsection (1) may also include a person whose
3436	knowledge or expertise may significantly contribute to the formal review.
3437	(4) A committee described in this section may not include an individual who:
3438	(a) was involved in, or who supervises a person who was involved in, the near fatality
3439	or the death; or
3440	(b) has a conflict with the fatality review.
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3442	[62A-16-204.] <u>26B-1-505.</u> Fatality review committee proceedings.
3443	(1) A majority vote of committee members present constitutes the action of the
3444	committee.
3445	(2) The department shall give the committee access to all reports, records, and other
3446	documents that are relevant to the near fatality or the death under investigation, including:
3447	(a) narrative reports;
3448	(b) case files;
3449	(c) autopsy reports; and
3450	(d) police reports, unless the report is protected from disclosure under Subsection
3451	63G-2-305(10) or (11).
3452	(3) The Utah State Hospital and the Utah State Developmental Center shall provide
3453	protected health information to the committee if requested by a fatality review coordinator.
3454	(4) A committee shall convene its first meeting within 14 days after the day on which a

- formal review is ordered, unless this time is extended, for good cause, by the director of the 3455 3456 Office of Quality and Design. (5) A committee may interview a staff member, a provider, or any other person who 3457 may have knowledge or expertise that is relevant to the formal review. 3458 3459 (6) A committee shall render an advisory opinion regarding: (a) whether the provisions of law, rule, policy, and procedure relating to the qualified 3460 3461 individual and the individual's family were complied with; 3462 (b) whether the near fatality or the death was responded to properly: 3463 (c) whether to recommend that a law, rule, policy, or procedure be changed; and 3464 (d) whether additional training is needed. 3465 3466 [62A-16-301.] 26B-1-506. Fatality review committee report -- Response to 3467 report. (1) Within 20 days after the day on which the committee proceedings described in 3468 3469 Section 62A-16-204 end, the committee shall submit: 3470 (a) a written report to the executive director that includes: 3471 (i) the advisory opinions made under Subsection 62A-16-204(6); and (ii) any recommendations regarding action that should be taken in relation to an 3472 3473 employee of the department or a person who contracts with the department; 3474 (b) a copy of the report described in Subsection (1)(a) to: 3475 (i) the director, or the director's designee, of the office or division to which the near 3476 fatality or the death relates; and 3477 (ii) the regional director, or the regional director's designee, of the region to which the 3478 near fatality or the death relates; and 3479 (c) a copy of the report described in Subsection (1)(a), with only identifying 3480 information redacted, to the Office of Legislative Research and General Counsel. 3481 (2) Within 20 days after the day on which the director described in Subsection (1)(b)(i) 3482
 - (2) Within 20 days after the day on which the director described in Subsection (1)(b)(i) receives a copy of the report described in Subsection (1)(a), the director shall provide a written response to the director of the Office of Quality and Design and a copy of the response, with only identifying information redacted, to the Office of Legislative Research and General Counsel, if the report:
 - (a) indicates that a law, rule, policy, or procedure was not complied with;

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(b) indicates that the near fatality or the death was not responded to properly; 3487 (c) recommends that a law, rule, policy, or procedure be changed; or 3488 (d) indicates that additional training is needed. 3489 3490 (3) The response described in Subsection (2) shall include a plan of action to 3491 implement any recommended improvements within the office or division. 3492 (4) Within 30 days after the day on which the executive director receives the response 3493 described in Subsection (2), the executive director, or the executive director's designee shall: 3494 (a) review the plan of action described in Subsection (3): 3495 (b) make any written response that the executive director or the executive director's 3496 designee determines is necessary; (c) provide a copy of the written response described in Subsection (4)(b), with only 3497 3498 identifying information redacted, to the Office of Legislative Research and General Counsel; 3499 and 3500 (d) provide an unredacted copy of the response described in Subsection (4)(b) to the 3501 director of the Office of Quality and Design. 3502 (5) A report described in Subsection (1) and each response described in this section 3503 is a protected record. 3504 (6) (a) As used in this Subsection (6), "fatality review document" means any 3505 document created in connection with, or as a result of, a formal review of a near fatality or a 3506 death, or a decision whether to conduct a formal review of a near fatality or a death, 3507 including: 3508 (i) a report described in Subsection (1); 3509 (ii) a response described in this section; (iii) a recommendation regarding whether a formal review should be conducted: 3510 3511 (iv) a decision to conduct a formal review; 3512 (v) notes of a person who participates in a formal review; 3513 (vi) notes of a person who reviews a formal review report; (vii) minutes of a formal review; 3514 3515 (viii) minutes of a meeting where a formal review report is reviewed; and (ix) minutes of, documents received in relation to, and documents generated in 3516 3517 relation to, the portion of a meeting of the Health and Human Services Interim Committee or 3518 the Child Welfare Legislative Oversight Panel that a formal review report or a document

3519 described in this Subsection (6)(a) is reviewed or discussed.

- 3520 (b) A fatality review document is not subject to discovery, subpoena, or similar 3521 compulsory process in any civil, judicial, or administrative proceeding, nor shall any individual 3522 or organization with lawful access to the data be compelled to testify with regard to a report 3523 described in Subsection (1) or a response described in this section.
- 3524 (c) The following are not admissible as evidence in a civil, judicial, or administrative proceeding:
 - (i) a fatality review document; and
 - (ii) an executive summary described in Subsection 62A-16-302(4).

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- [62A-16-302.] 26B-1-507. Reporting to, and review by, legislative committees.
- 3530 (1) The Office of Legislative Research and General Counsel shall provide a copy of 3531 the report described in Subsection 62A-16-301(1)(c), and the responses described in 3532 Subsections 62A-16-301(2) and (4)(c) to the chairs of:
 - (a) the Health and Human Services Interim Committee; or
 - (b) if the qualified individual who is the subject of the report is an individual described in Subsection 62A-16-102(7)(c), (d), or (h), the Child Welfare Legislative Oversight Panel.
 - (2) (a) The Health and Human Services Interim Committee may, in a closed meeting, review a report described in Subsection 62A-16-301(1)(b).
 - (b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a report described in Subsection (1)(b).
 - (3) (a) The Health and Human Services Interim Committee and the Child Welfare Legislative Oversight Panel may not interfere with, or make recommendations regarding, the resolution of a particular case.
 - (b) The purpose of a review described in Subsection (2) is to assist a committee or panel described in Subsection (2) in determining whether to recommend a change in the law.
 - (c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a change in the law shall be made in an open meeting.
 - (4) (a) On or before September 1 of each year, the department shall provide an executive summary of all formal review reports for the preceding state fiscal year to the Office of Legislative Research and General Counsel.
 - (b) The Office of Legislative Research and General Counsel shall forward a copy of

3551	the executive summary described in Subsection (4)(a) to:
3552	(i) the Health and Human Services Interim Committee; and
3553	(ii) the Child Welfare Legislative Oversight Panel.
3554	(5) The executive summary described in Subsection (4):
3555	(a) may not include any names or identifying information;
3556	(b) shall include:
3557	(i) all recommendations regarding changes to the law that were made during the
3558	preceding fiscal year under Subsection 62A-16-204(6);
3559	(ii) all changes made, or in the process of being made, to a law, rule, policy, or
3560	procedure in response to a formal review that occurred during the preceding fiscal year;
3561	(iii) a description of the training that has been completed in response to a formal
3562	review that occurred during the preceding fiscal year;
3563	(iv) statistics for the preceding fiscal year regarding:
3564	(A) the number of qualified individuals and the type of deaths and near fatalities that
3565	are known to the department;
3566	(B) the number of formal reviews conducted;
3567	(C) the categories described in Subsection 62A-16-102(7) of qualified individuals;
3568	(D) the gender, age, race, and other significant categories of qualified individuals; and
3569	(E) the number of fatalities of qualified individuals known to the department that are
3570	identified as suicides; and
3571	(v) action taken by the Office of Licensing and the Bureau of Internal Review and
3572	Audits in response to the near fatality or the death of a qualified individual; and
3573	(c) is a public document.
3574	(6) The Division of Child and Family Services shall, to the extent required by the
3575	federal Child Abuse Prevention and Treatment Act, as amended, allow public disclosure of
3576	the findings or information relating to a case of child abuse or neglect that results in a child
3577	fatality or a near fatality.
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3579	Chapter 2. Licensing and Certifications.
3580	
3581	Part 1. Human Services Programs and Facilities.
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3583	26B-2-101. [Clinical services Reserved] Definitions.
3584	[Reserved] As used in this part:
3585	(1) "Adoption services" means the same as that term is defined in Section 80-2-801.
3586	(2) "Adult day care" means nonresidential care and supervision:
3587	(a) for three or more adults for at least four but less than 24 hours a day; and
3588	(b) that meets the needs of functionally impaired adults through a comprehensive
3589	program that provides a variety of health, social, recreational, and related support services in
3590	a protective setting.
3591	(3) "Applicant" means a person that applies for an initial license or a license renewal
3592	under this part.
3593	(4) (a) "Associated with the licensee" means that an individual is:
3594	(i) affiliated with a licensee as an owner, director, member of the governing body,
3595	employee, agent, provider of care, department contractor, or volunteer; or
3596	(ii) applying to become affiliated with a licensee in a capacity described in Subsection
3597	<u>(4)(a)(i).</u>
3598	(b) "Associated with the licensee" does not include:
3599	(i) service on the following bodies, unless that service includes direct access to a child
3600	or a vulnerable adult:
3601	(A) a local mental health authority described in Section 17-43-301;
3602	(B) a local substance abuse authority described in Section 17-43-201; or
3603	(C) a board of an organization operating under a contract to provide mental health or
3604	substance abuse programs, or services for the local mental health authority or substance
3605	abuse authority; or
3606	(ii) a guest or visitor whose access to a child or a vulnerable adult is directly
3607	supervised at all times.
3608	(5) (a) "Boarding school" means a private school that:
3609	(i) uses a regionally accredited education program;
3610	(ii) provides a residence to the school's students:
3611	(A) for the purpose of enabling the school's students to attend classes at the school;
3612	<u>and</u>
3613	(B) as an ancillary service to educating the students at the school;
3614	(iii) has the primary purpose of providing the school's students with an education, as

3615	defined in Subsection (5)(b)(i); and
3616	(iv) (A) does not provide the treatment or services described in Subsection (38)(a); or
3617	(B) provides the treatment or services described in Subsection (38)(a) on a limited
3618	basis, as described in Subsection (5)(b)(ii).
3619	(b) (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for
3620	one or more of grades kindergarten through 12th grade.
3621	(ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or
3622	services described in Subsection (38)(a) on a limited basis if:
3623	(A) the treatment or services described in Subsection (38)(a) are provided only as an
3624	incidental service to a student; and
3625	(B) the school does not:
3626	(I) specifically solicit a student for the purpose of providing the treatment or services
3627	described in Subsection (38)(a); or
3628	(II) have a primary purpose of providing the treatment or services described in
3629	Subsection (38)(a).
3630	(c) "Boarding school" does not include a therapeutic school.
3631	(6) "Child" means an individual under 18 years old.
3632	(7) "Child placing" means receiving, accepting, or providing custody or care for any
3633	child, temporarily or permanently, for the purpose of:
3634	(a) finding a person to adopt the child;
3635	(b) placing the child in a home for adoption; or
3636	(c) foster home placement.
3637	(8) "Child-placing agency" means a person that engages in child placing.
3638	(9) "Client" means an individual who receives or has received services from a
3639	<u>licensee.</u>
3640	(10) (a) "Congregate care program" means any of the following that provide services
3641	to a child:
3642	(i) an outdoor youth program;
3643	(ii) a residential support program;
3644	(iii) a residential treatment program; or
3645	(iv) a therapeutic school.
3646	(b) "Congregate care program" does not include a human services program that:

3647	(i) is licensed to serve adults; and
3648	(ii) is approved by the office to service a child for a limited time.
3649	(11) "Day treatment" means specialized treatment that is provided to:
3650	(a) a client less than 24 hours a day; and
3651	(b) four or more persons who:
3652	(i) are unrelated to the owner or provider; and
3653	(ii) have emotional, psychological, developmental, physical, or behavioral
3654	dysfunctions, impairments, or chemical dependencies.
3655	(12) "Department contractor" means an individual who:
3656	(a) provides services under a contract with the department; and
3657	(b) due to the contract with the department, has or will likely have direct access to a
3658	child or vulnerable adult.
3659	(13) "Direct access" means that an individual has, or likely will have:
3660	(a) contact with or access to a child or vulnerable adult that provides the individual
3661	with an opportunity for personal communication or touch; or
3662	(b) an opportunity to view medical, financial, or other confidential personal identifying
3663	information of the child, the child's parents or legal guardians, or the vulnerable adult.
3664	(14) "Directly supervised" means that an individual is being supervised under the
3665	uninterrupted visual and auditory surveillance of another individual who has a current
3666	background screening approval issued by the office.
3667	(15) "Director" means the director of the office.
3668	(16) "Domestic violence" means the same as that term is defined in Section 77-36-1
3669	(17) "Domestic violence treatment program" means a nonresidential program
3670	designed to provide psychological treatment and educational services to perpetrators and
3671	victims of domestic violence.
3672	(18) "Elder adult" means a person 65 years old or older.
3673	(19) "Foster home" means a residence that is licensed or certified by the office for
3674	the full-time substitute care of a child.
3675	(20) "Health benefit plan" means the same as that term is defined in Section
3676	31A-1-301.
3677	(21) "Health care provider" means the same as that term is defined in Section
3678	78B-3-403.

3679	(22) "Health insurer" means the same as that term is defined in Section
3680	<u>31A-22-615.5.</u>
3681	(23) (a) "Human services program" means:
3682	(i) a foster home;
3683	(ii) a therapeutic school;
3684	(iii) a youth program;
3685	(iv) an outdoor youth program;
3686	(v) a residential treatment program;
3687	(vi) a residential support program;
3688	(vii) a resource family home;
3689	(viii) a recovery residence; or
3690	(ix) a facility or program that provides:
3691	(A) adult day care;
3692	(B) day treatment;
3693	(C) outpatient treatment;
3694	(D) domestic violence treatment;
3695	(E) child-placing services;
3696	(F) social detoxification; or
3697	(G) any other human services that are required by contract with the department to be
3698	licensed with the department.
3699	(b) "Human services program" does not include:
3700	(i) a boarding school; or
3701	(ii) a residential, vocational and life skills program, as defined in Section 13-53-102.
3702	(24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
3703	(25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
3704	(26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
3705	(27) "Intermediate secure treatment" means 24-hour specialized residential treatment
3706	or care for an individual who:
3707	(a) cannot live independently or in a less restrictive environment; and
3708	(b) requires, without the individual's consent or control, the use of locked doors to
3709	care for the individual.
3710	(28) "Licensee" means an individual or a human services program licensed by the

3711	office.
3712	(29) "Local government" means a city, town, metro township, or county.
3713	(30) "Minor" means child.
3714	(31) "Office" means the Office of Licensing within the department.
3715	(32) "Outdoor youth program" means a program that provides:
3716	(a) services to a child that has:
3717	(i) a chemical dependency; or
3718	(ii) a dysfunction or impairment that is emotional, psychological, developmental,
3719	physical, or behavioral;
3720	(b) a 24-hour outdoor group living environment; and
3721	(c) (i) regular therapy, including group, individual, or supportive family therapy; or
3722	(ii) informal therapy or similar services, including wilderness therapy, adventure
3723	therapy, or outdoor behavioral healthcare.
3724	(33) "Outpatient treatment" means individual, family, or group therapy or counseling
3725	designed to improve and enhance social or psychological functioning for those whose
3726	physical and emotional status allows them to continue functioning in their usual living
3727	environment.
3728	(34) "Practice group" or "group practice" means two or more health care providers
3729	legally organized as a partnership, professional corporation, or similar association, for which
3730	(a) substantially all of the services of the health care providers who are members of
3731	the group are provided through the group and are billed in the name of the group and
3732	amounts received are treated as receipts of the group; and
3733	(b) the overhead expenses of and the income from the practice are distributed in
3734	accordance with methods previously determined by members of the group.
3735	(35) "Private-placement child" means a child whose parent or guardian enters into a
3736	contract with a congregate care program for the child to receive services.
3737	(36) (a) "Recovery residence" means a home, residence, or facility that meets at
3738	least two of the following requirements:
3739	(i) provides a supervised living environment for individuals recovering from a
3740	substance use disorder;
3741	(ii) provides a living environment in which more than half of the individuals in the
3742	residence are recovering from a substance use disorder;

3743	(iii) provides or arranges for residents to receive services related to their recovery
3744	from a substance use disorder, either on or off site;
3745	(iv) is held out as a living environment in which individuals recovering from substance
3746	abuse disorders live together to encourage continued sobriety; or
3747	(v) (A) receives public funding; or
3748	(B) is run as a business venture, either for-profit or not-for-profit.
3749	(b) "Recovery residence" does not mean:
3750	(i) a residential treatment program;
3751	(ii) residential support program; or
3752	(iii) a home, residence, or facility, in which:
3753	(A) residents, by their majority vote, establish, implement, and enforce policies
3754	governing the living environment, including the manner in which applications for residence
3755	are approved and the manner in which residents are expelled;
3756	(B) residents equitably share rent and housing-related expenses; and
3757	(C) a landlord, owner, or operator does not receive compensation, other than fair
3758	market rental income, for establishing, implementing, or enforcing policies governing the
3759	living environment.
3760	(37) "Regular business hours" means:
3761	(a) the hours during which services of any kind are provided to a client; or
3762	(b) the hours during which a client is present at the facility of a licensee.
3763	(38) (a) "Residential support program" means a program that arranges for or
3764	provides the necessities of life as a protective service to individuals or families who have a
3765	disability or who are experiencing a dislocation or emergency that prevents them from
3766	providing these services for themselves or their families.
3767	(b) "Residential support program" includes a program that provides a supervised
3768	living environment for individuals with dysfunctions or impairments that are:
3769	(i) emotional;
3770	(ii) psychological;
3771	(iii) developmental; or
3772	(iv) behavioral.
3773	(c) Treatment is not a necessary component of a residential support program.
3774	(d) "Residential support program" does not include:

3775	(i) a recovery residence; or
3776	(ii) a program that provides residential services that are performed:
3777	(A) exclusively under contract with the department and provided to individuals through
3778	the Division of Services for People with Disabilities; or
3779	(B) in a facility that serves fewer than four individuals.
3780	(39) (a) "Residential treatment" means a 24-hour group living environment for four or
3781	more individuals unrelated to the owner or provider that offers room or board and specialized
3782	treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
3783	services for persons with emotional, psychological, developmental, or behavioral
3784	dysfunctions, impairments, or chemical dependencies.
3785	(b) "Residential treatment" does not include a:
3786	(i) boarding school;
3787	(ii) foster home; or
3788	(iii) recovery residence.
3789	(40) "Residential treatment program" means a program or facility that provides:
3790	(a) residential treatment; or
3791	(b) intermediate secure treatment.
3792	(41) "Seclusion" means the involuntary confinement of an individual in a room or an
3793	<u>area:</u>
3794	(a) away from the individual's peers; and
3795	(b) in a manner that physically prevents the individual from leaving the room or area.
3796	(42) "Social detoxification" means short-term residential services for persons who are
3797	experiencing or have recently experienced drug or alcohol intoxication, that are provided
3798	outside of a health care facility licensed under Part 2, Health Care Facility Licensing and
3799	Inspection, and that include:
3800	(a) room and board for persons who are unrelated to the owner or manager of the
3801	facility;
3802	(b) specialized rehabilitation to acquire sobriety; and
3803	(c) aftercare services.
3804	(43) "Substance abuse disorder" or "substance use disorder" mean the same as
3805	"substance use disorder" is defined in Section 62A-15-1202.
3806	(44) "Substance abuse treatment program" or "substance use disorder treatment

3807	program" means a program:
3808	(a) designed to provide:
3809	(i) specialized drug or alcohol treatment;
3810	(ii) rehabilitation; or
3811	(iii) habilitation services; and
3812	(b) that provides the treatment or services described in Subsection (44)(a) to persons
3813	with:
3814	(i) a diagnosed substance use disorder; or
3815	(ii) chemical dependency disorder.
3816	(45) "Therapeutic school" means a residential group living facility:
3817	(a) for four or more individuals that are not related to:
3818	(i) the owner of the facility; or
3819	(ii) the primary service provider of the facility;
3820	(b) that serves students who have a history of failing to function:
3821	(i) at home;
3822	(ii) in a public school; or
3823	(iii) in a nonresidential private school; and
3824	(c) that offers:
3825	(i) room and board; and
3826	(ii) an academic education integrated with:
3827	(A) specialized structure and supervision; or
3828	(B) services or treatment related to:
3829	(I) a disability;
3830	(II) emotional development;
3831	(III) behavioral development;
3832	(IV) familial development; or
3833	(V) social development.
3834	(46) "Unrelated persons" means persons other than parents, legal guardians,
3835	grandparents, brothers, sisters, uncles, or aunts.
3836	(47) "Vulnerable adult" means an elder adult or an adult who has a temporary or
3837	permanent mental or physical impairment that substantially affects the person's ability to:
3838	(a) provide personal protection;

3839	(b) provide necessities such as food, shelter, clothing, or mental or other health care;
3840	(c) obtain services necessary for health, safety, or welfare;
3841	(d) carry out the activities of daily living;
3842	(e) manage the adult's own resources; or
3843	(f) comprehend the nature and consequences of remaining in a situation of abuse,
3844	neglect, or exploitation.
3845	(48) (a) "Youth program" means a program designed to provide behavioral,
3846	substance abuse, or mental health services to minors that:
3847	(i) serves adjudicated or nonadjudicated youth;
3848	(ii) charges a fee for its services;
3849	(iii) may provide host homes or other arrangements for overnight accommodation of
3850	the youth;
3851	(iv) may provide all or part of its services in the outdoors;
3852	(v) may limit or censor access to parents or guardians; and
3853	(vi) prohibits or restricts a minor's ability to leave the program at any time of the
3854	minor's own free will.
3855	(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
3856	Scouts, 4-H, and other such organizations.
3857	(49) (a) "Youth transportation company" means any person that transports a child for
3858	payment to or from a congregate care program in Utah.
3859	(b) "Youth transportation company" does not include:
3860	(i) a relative of the child;
3861	(ii) a state agency; or
3862	(iii) a congregate care program's employee who transports the child from the
3863	congregate care program that employs the employee and returns the child to the same
3864	congregate care program.
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3866	[62A-2-102.] <u>26B-2-102.</u> Purpose of licensure.
3867	The purpose of licensing under this [chapter] part is to permit or authorize a public or
3868	private agency to provide defined human services programs within statutory and regulatory
3869	guidelines.

3871	[62A-2-103.] 26B-2-103. Office of Licensing Appointment Qualifications of
3872	director.
3873	(1) There is created the Office of Licensing within the Department of Human Services
3874	(2) The office shall be the licensing authority for the department, and is vested with
3875	all the powers, duties, and responsibilities described in this [chapter] part.
3876	(2) The executive director shall appoint the director of the office.
3877	(3) The director shall have a bachelor's degree from an accredited university or
3878	college, be experienced in administration, and be knowledgeable of human services
3879	licensing.
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3881	[62A-2-106.] <u>26B-2-104</u> Office responsibilities.
3882	(1) Subject to the requirements of federal and state law, the office shall:
3883	(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
3884	Rulemaking Act, to establish:
3885	(i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
3886	licensees, that shall be limited to:
3887	(A) fire safety;
3888	(B) food safety;
3889	(C) sanitation;
3890	(D) infectious disease control;
3891	(E) safety of the:
3892	(I) physical facility and grounds; and
3893	(II) area and community surrounding the physical facility;
3894	(F) transportation safety;
3895	(G) emergency preparedness and response;
3896	(H) the administration of medical standards and procedures, consistent with the
3897	related provisions of this title;
3898	(I) staff and client safety and protection;
3899	(J) the administration and maintenance of client and service records;
3900	(K) staff qualifications and training, including standards for permitting experience to
3901	be substituted for education, unless prohibited by law;
3902	(L) staff to client ratios;

3903 (M) access to firearms; and 3904 (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: 3905 3906 (A) fire safety, except that the standards are limited to those required by law or rule 3907 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act; 3908 (B) food safety; 3909 (C) sanitation; 3910 (D) infectious disease control, except that the standards are limited to: 3911 (I) those required by law or rule under [Title 26, Utah Health Code] this title, or Title 3912 26A, Local Health Authorities; and 3913 (II) requiring a separate room for clients who are sick: 3914 (E) safety of the physical facility and grounds, except that the standards are limited to 3915 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks 3916 Act: 3917 (F) transportation safety; 3918 (G) emergency preparedness and response: 3919 (H) access to appropriate medical care, including: 3920 (I) subject to the requirements of law, designation of a person who is authorized to 3921 dispense medication; and 3922 (II) storing, tracking, and securing medication; 3923 (I) staff and client safety and protection that permits the school to provide for the 3924 direct supervision of clients at all times; 3925 (J) the administration and maintenance of client and service records; (K) staff qualifications and training, including standards for permitting experience to 3926 3927 be substituted for education, unless prohibited by law; 3928 (L) staff to client ratios; 3929 (M) access to firearms; and (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud; 3930 (iii) procedures and standards for permitting a licensee to: 3931 (A) provide in the same facility and under the same conditions as children, residential 3932 3933 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

3935	18th birthday;
3936	(II) has resided at the licensee's residential treatment facility continuously since the
3937	time described in Subsection (1)(a)(iii)(A)(I);
3938	(III) has not completed the course of treatment for which the person began residing at
3939	the licensee's residential treatment facility; and
3940	(IV) voluntarily consents to complete the course of treatment described in Subsection
3941	(1)(a)(iii)(A)(III); or
3942	(B) (I) provide residential treatment services to a child who is:
3943	(Aa) at least 12 years old or, as approved by the office, younger than 12 years old;
3944	and
3945	(Bb) under the custody of the [Department of Human Services] department, or one
3946	of its divisions; and
3947	(II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),
3948	residential treatment services to a person who is:
3949	(Aa) at least 18 years old, but younger than 21 years old; and
3950	(Bb) under the custody of the [Department of Human Services] department, or one
3951	of its divisions;
3952	(iv) minimum administration and financial requirements for licensees;
3953	(v) guidelines for variances from rules established under this Subsection (1);
3954	(vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum
3955	responsibilities of a child-placing agency that provides adoption services and that is licensed
3956	under this [chapter] <u>part</u> ;
3957	(vii) what constitutes an "outpatient treatment program" for purposes of this [chapter]
3958	part;
3959	(viii) a procedure requiring a licensee to provide an insurer the licensee's records
3960	related to any services or supplies billed to the insurer, and a procedure allowing the licensee
3961	and the insurer to contact the Insurance Department to resolve any disputes;
3962	(ix) a protocol for the office to investigate and process complaints about licensees;
3963	(x) a procedure for a licensee to:
3964	(A) report the use of a restraint or seclusion within one business day after the day on
3965	which the use of the restraint or seclusion occurs; and

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(B) report a critical incident within one business day after the day on which the

- 3967 incident occurs:
- 3968 (xi) guidelines for the policies and procedures described in Sections [62A-2-123]
- 3969 <u>26B-2-129</u> and [62A-2-124] <u>26B-2-130</u>;
- 3970 (xii) a procedure for the office to review and approve the policies and procedures
- 3971 described in Sections [62A-2-123] 26B-2-129 and [62A-2-124] 26B-2-130; and
- 3972 (xiii) a requirement that each human services program publicly post information that informs an individual how to submit a complaint about a human services program to the
- 3974 office;
- 3975 (b) enforce rules relating to the office;
- 3976 (c) issue licenses in accordance with this [chapter] part;
- 3977 (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
- 3979 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
- 3980 provide intercountry adoption services pursuant to:
- 3981 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
- 3982 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
- 3983 No. 106-279;
- (e) make rules to implement the provisions of Subsection (1)(d);
- 3985 (f) conduct surveys and inspections of licensees and facilities in accordance with
- 3986 Section 62A-2-118;
- 3987 (g) collect licensure fees;
- 3988 (h) notify licensees of the name of a person within the department to contact when
- 3989 filing a complaint;
- 3990 (i) investigate complaints regarding any licensee or human services program;
- (j) have access to all records, correspondence, and financial data required to be
- 3992 maintained by a licensee;
- 3993 (k) have authority to interview any client, family member of a client, employee, or
- 3994 officer of a licensee;
- 3995 (I) have authority to deny, condition, revoke, suspend, or extend any license issued by
- 3996 the department under this [chapter] part by following the procedures and requirements of
- 3997 Title 63G, Chapter 4, Administrative Procedures Act;
- (m) electronically post notices of agency action issued to a human services program,

- 3999 with the exception of a foster home, on the office's website, in accordance with Title 63G, 4000 Chapter 2, Government Records Access and Management Act; and
 - (n) upon receiving a local government's request under Section 62A-2-108.4, notify the local government of new human services program license applications, except for foster homes, for human services programs located within the local government's jurisdiction.
 - (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

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- (iii) by or against a staff member while the staff member is on duty;
- 4012 (b) immediately report to emergency medical services any medical emergency, as 4013 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
- 4017 (c) immediately report other emergencies that occur on the premises where the 4018 licensee operates its human services program to the appropriate emergency services 4019 agency.

[62A-2-108.] 26B-2-105 Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section [62A-2-110] 26B-2-113, an individual, agency, firm, corporation, association, or governmental unit acting severally or jointly with any other individual, 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] part and the rules under the authority of this [chapter] part.
- (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;

4031	(ii) as a partner;
4032	(iii) as a shareholder; or
4033	(iv) as a person or entity involved in the ownership or management of a human
4034	services program owned or managed by the other person or entity.
4035	(b) A license issued under this [chapter] part may not be assigned or transferred.
4036	(c) An application for a license under this [chapter] part shall be treated as an
4037	application for reinstatement of a revoked license if:
4038	(i) (A) the person or entity applying for the license had a license revoked under this
4039	[chapter] <u>part</u> ; and
4040	(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before
4041	the application described in this Subsection (2)(c) is made; or
4042	(ii) a member of an entity applying for the license:
4043	(A) (I) had a license revoked under this [chapter] part; and
4044	(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before
4045	the application described in this Subsection (2)(c) is made; or
4046	(B) (I) was a member of an entity that had a license revoked under this [chapter] part
4047	at any time before the license was revoked; and
4048	(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before
4049	the application described in this Subsection (2)(c) is made.
4050	(3) A current license shall at all times be posted in the facility where each human
4051	services program is operated, in a place that is visible and readily accessible to the public.
4052	(4) (a) Except as provided in Subsection (4)(c), each license issued under this
4053	[chapter] part expires at midnight on the last day of the same month the license was issued,
4054	one year following the date of issuance unless the license has been:
4055	(i) previously revoked by the office;
4056	(ii) voluntarily returned to the office by the licensee; or
4057	(iii) extended by the office.
4058	(b) A license shall be renewed upon application and payment of the applicable fee,
4059	unless the office finds that the licensee:
4060	(i) is not in compliance with the:
4061	(A) provisions of this [chapter] <u>part</u> ; or

(B) rules made under this [chapter] part;

- 4063 (ii) has engaged in a pattern of noncompliance with the:
- 4064 (A) provisions of this [chapter] part; or

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- 4065 (B) rules made under this [chapter] part;
- 4066 (iii) has engaged in conduct that is grounds for denying a license under Section 4067 [62A-2-112] 26B-2-115; 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 on the last day of the same month the license was issued, two years following the date of issuance, 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] part or a rule made under this [chapter] part.
 - (5) Any licensee that is in operation at the time rules are made in accordance with this [chapter] part 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.
- 4079 (b) A human services program shall obtain a separate license for each site where the 4080 human services program is operated.

[62A-2-109.] 26B-2-106. License application -- Classification of information.

- (1) An application for a license under this [chapter] <u>part</u> shall be made to the office and shall contain information that is necessary to comply with approved rules.
- (2) Information received by the office through reports and inspections shall be classified in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

[62A-2-118.] 26B-2-107. Administrative inspections.

- (1) (a) Subject to Subsection (1)(b), the office may, for the purpose of ascertaining compliance with this [chapter] part, enter and inspect on a routine basis the facility of a licensee.
- 4093 (b) (i) The office shall enter and inspect a congregate care program at least once each calendar quarter.

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4095	(ii) At least two of the inspections described in Subsection (1)(b)(i) shall be
4096	unannounced.
4097	(c) If another government entity conducts an inspection that is substantially similar to
4098	an inspection conducted by the office, the office may conclude the inspection satisfies an
4099	inspection described in Subsection (1)(b).
4100	(2) Before conducting an inspection under Subsection (1), the office shall, after
4101	identifying the person in charge:
4102	(a) give proper identification;
4103	(b) request to see the applicable license;
4104	(c) describe the nature and purpose of the inspection; and
4105	(d) if necessary, explain the authority of the office to conduct the inspection and the
4106	penalty for refusing to permit the inspection as provided in Section [62A-2-116] 26B-2-120.
4107	(3) In conducting an inspection under Subsection (1), the office may, after meeting
4108	the requirements of Subsection (2):
4109	(a) inspect the physical facilities;
4110	(b) inspect and copy records and documents;
4111	(c) interview officers, employees, clients, family members of clients, and others; and
4112	(d) observe the licensee in operation.
4113	(4) An inspection conducted under Subsection (1) shall be during regular business
4114	hours and may be announced or unannounced.
4115	(5) The licensee shall make copies of inspection reports available to the public upon
4116	request.
4117	(6) The provisions of this section apply to on-site inspections and do not restrict the
4118	office from contacting family members, neighbors, or other individuals, or from seeking
4119	information from other sources to determine compliance with this [chapter] part.
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4121	[62A-2-119.] <u>26B-2-108.</u> Adoption of inspections, examinations, and studies.
4122	The office may adopt an inspection, examination, or study conducted by a public or
4123	private entity, as identified by rule, to determine whether a licensee has complied with a
4124	licensing requirement imposed by virtue of this [chapter] part.
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[62A-2-124.] <u>26B-2-109.</u> Human services program non-discrimination.

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4127	A human services program:
4128	(1) shall perform an individualized assessment when classifying and placing an
4129	individual in programs and living environments; and
4130	(2) subject to the office's review and approval, shall create policies and procedures
4131	that include:
4132	(a) a description of what constitutes sex and gender based abuse, discrimination, and
4133	harassment;
4134	(b) procedures for preventing and reporting abuse, discrimination, and harassment;
4135	and
4136	(c) procedures for teaching effective and professional communication with individuals
4137	of all sexual orientations and genders.
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4139	[62A-2-113.] <u>26B-2-110.</u> License revocation Suspension.
4140	(1) If a license is revoked, the office may not grant a new license unless:
4141	(a) the human services program provides satisfactory evidence to the office that the
4142	conditions upon which revocation was based have been corrected;
4143	(b) the human services program is inspected by the office and found to be in
4144	compliance with all provisions of this [chapter] part and applicable rules;
4145	(c) at least five years have passed since the day on which the licensee is served with
4146	final notice that the license is revoked; and
4147	(d) the office determines that the interests of the public will not be jeopardized by
4148	granting the license.
4149	(2) The office may suspend a license for no longer than three years.
4150	(3) When a license has been suspended, the office may restore, or restore subject to
4151	conditions, the suspended license upon a determination that the:
4152	(a) conditions upon which the suspension was based have been completely or
4153	partially corrected; and
4154	(b) interests of the public will not be jeopardized by restoration of the license.
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4156	[62A-2-111.] <u>26B-2-111.</u> Adjudicative proceedings.
4157	(1) Whenever the office has reason to believe that a licensee is in violation of this
4158	[chapter] part or rules made under this [chapter] part, the office may commence

adjudicative proceedings to determine the legal rights of the licensee by serving notice of agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) A licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this [chapter] part.

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[62A-2-112.] 26B-2-112. Violations -- Penalties.

- 4169 (1) As used in this section, "health care provider" means a person licensed to provide 4170 health care services under this [chapter] part.
 - (2) 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] part;
 - (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.
 - (3) The office may restrict or prohibit new admissions to a human services program, if it finds:
- 4181 (a) that there has been a failure to comply with rules established under this [chapter]
 4182 part;
 - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
- 4184 (c) evidence of conduct adverse to the standards required to provide services and 4185 promote public trust, including aiding, abetting, or permitting the commission of abuse, 4186 neglect, exploitation, harm, mistreatment, or fraud.
 - (4) (a) The office may assess a fine of up to \$500 per violation against a health care provider that violates Section 31A-26-313.
 - (b) The office shall waive the fine described in Subsection (4)(a) if:
 - (i) the health care provider demonstrates to the office that the health care provider

mitigated and reversed any damage to the insured caused by the health care provider or third party's violation; or

- (ii) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care provider or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.
- (5) If a congregate care program knowingly fails to comply with the provisions of Section [62A-2-125] 26B-2-131, the office may impose a penalty on the congregate care program that is less than or equal to the cost of care incurred by the state for a private-placement child described in Subsection [62A-2-125] 26B-2-131 (3).
- 4201 (6) The office shall make rules for calculating the cost of care described in Subsection 4202 (5) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[62A-2-116.] <u>26B-2-113.</u> Violation -- Criminal penalties.

- (1) (a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this [chapter] part 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
- 4212 (iii) seeking injunctive or equitable relief.

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- 4213 (2) Any person that violates a provision of this [chapter] part, lawful orders of the
 4214 office, or rules adopted under this [chapter] part may be assessed a penalty not to exceed
 4215 the sum of \$10,000 per violation, in:
 - (a) a judicial civil proceeding; or
- 4217 (b) an administrative action in accordance with Title 63G, Chapter 4, Administrative 4218 Procedures Act.
- 4219 (3) Assessment of a judicial penalty or an administrative penalty does not preclude 4220 the office from:
- 4221 (a) seeking criminal penalties;
- 4222 (b) denying, placing conditions on, suspending, or revoking a license; or

- 4223 (c) seeking injunctive or equitable relief.
- 4224 (4) The office may assess the human services program the cost incurred by the office in placing a monitor. 4225
- 4226 (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an 4227 individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers, 4228 pays, promises to pay, solicits, or receives any remuneration, including any commission, 4229 bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, 4230 or engages in any split-fee arrangement in return for:
- 4231 (a) referring an individual to a person for the furnishing or arranging for the furnishing 4232 of any item or service for the treatment of a substance use disorder;
 - (b) receiving a referred individual for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder; or
 - (c) referring a clinical sample to a person, including a laboratory, for testing that is used toward the furnishing of any item or service for the treatment of a substance use disorder.
 - (6) Subsection (5) does not prohibit:

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- 4239 (a) any discount, payment, waiver of payment, or payment practice not prohibited by 4240 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);
 - (b) patient referrals within a practice group:
 - (c) payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance use disorder goods or services under a health benefit plan;
 - (d) payments to or by a health care provider, practice group, or substance use disorder treatment program that has contracted with a local mental health authority, a local substance abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance use disorder services;
 - (e) payments by a health care provider, practice group, or substance use disorder treatment program to a health, mental health, or substance use disorder information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, if the information service:
 - (i) does not attempt, through standard questions for solicitation of consumer criteria or

through any other means, to steer or lead a consumer to select or consider selection of a
particular health care provider, practice group, or substance use disorder treatment program;

- (ii) does not provide or represent that the information service provides diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment; and
- (iii) charges and collects fees from a health care provider, practice group, or substance use disorder treatment program participating in information services that:
 - (A) are set in advance:

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- (B) are consistent with the fair market value for those information services; and
- 4264 (C) are not based on the potential value of the goods or services that a health care 4265 provider, practice group, or substance use disorder treatment program may provide to a 4266 patient; or
 - (f) payments by a laboratory to a person that:
 - (i) does not have a financial interest in or with a facility or person who refers a clinical sample to the laboratory;
- 4270 (ii) is not related to an owner of a facility or a person who refers a clinical sample to 4271 the laboratory;
 - (iii) is not related to and does not have a financial relationship with a health care provider who orders the laboratory to conduct a test that is used toward the furnishing of an item or service for the treatment of a substance use disorder;
 - (iv) identifies, in advance of providing marketing or sales services, the types of clinical samples that each laboratory will receive, if the person provides marketing or sales services to more than one laboratory;
 - (v) the person does not identify as or hold itself out to be a laboratory or part of a network with an insurance payor, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (6)(f)(vii)(B);
 - (vi) the person identifies itself in all marketing materials as a salesperson for a licensed laboratory and identifies each laboratory that the person represents, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (6)(f)(vii)(B); and
- 4285 (vii) (A) is a sales person employed by the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment; or

- 4287 (B) is a person under contract with the laboratory to market or sell the laboratory's
 4288 services to a person who provides substance use disorder treatment, if the total
 4289 compensation paid by the laboratory does not exceed the total compensation that the
 4290 laboratory pays to employees of the laboratory for similar marketing or sales services.
 - (7) (a) A person may not knowingly or willfully, in exchange for referring an individual to a youth transportation company:
- 4293 (i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly, 4294 overtly or covertly, in cash or in kind, including:
- 4295 (A) a commission;
- 4296 (B) a bonus;

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- 4297 (C) a kickback;
- 4298 (D) a bribe; or
- 4299 (E) a rebate; or
- 4300 (ii) engage in any split-fee arrangement.
- 4301 (b) A person who violates Subsection (7)(a) is guilty of a class A misdemeanor and 4302 shall be assessed a penalty in accordance with Subsection (2).

[62A-2-115.] <u>26B-2-114.</u> Injunctive relief and other legal procedures.

In addition to, and notwithstanding, any other remedy provided by law the department may, in a manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, management, or operation of a human services program or facility in violation of this [chapter] part or rules established under this [chapter] part.

4312 [62A-2-110.] <u>26B-2-115.</u> Exclusions from [chapter] <u>part</u>.

The provisions of this [chapter] part do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- 4316 (2) a facility or program operated by or under an exclusive contract with the 4317 Department of Corrections;
 - (3) unless required otherwise by a contract with the department, individual or group

4319	counseling by a mental health professional licensed under Title 58, Chapter 60, Mental
4320	Health Professional Practice Act;
4321	(4) a general acute hospital, small health care facility, specialty hospital, nursing care
4322	facility, or other health care facility licensed by the [Department of Health under Title 26,
4323	Chapter 21, department under Part 2, Health Care Facility Licensing and Inspection [Act];
4324	or
4325	(5) a boarding school.
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4327	[62A-2-108.1.] <u>26B-2-116.</u> Coordination of human services and educational
4328	services Licensing of programs Procedures.
4329	(1) As used in this section:
4330	(a) "Accredited private school" means a private school that is accredited by an
4331	accrediting entity recognized by the Utah State Board of Education.
4332	(b) "Education entitled children" means children:
4333	(i) subject to compulsory education under Section 53G-6-202;
4334	(ii) subject to the school attendance requirements of Section 53G-6-203; or
4335	(iii) who are eligible for special education services as described in Title 53E, Chapter
4336	7, Part 2, Special Education Program.
4337	(2) Subject to Subsection (9) or (10), a human services program may not be licensed
4338	to serve education entitled children unless the human services program presents an
4339	educational service plan that includes evidence:
4340	(a) satisfactory to:
4341	(i) the office; and
4342	(ii) (A) the local school board of the school district in which the human services
4343	program will be operated; or
4344	(B) the school district superintendent of the school district in which the human
4345	services program will be operated; and
4346	(b) that children served by the human services program shall receive appropriate
4347	educational services satisfying the requirements of applicable law.
4348	(3) An educational services plan may be accepted if the educational services plan
4349	includes:
4350	(a) the following information provided by the human services program:

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4351	(i) the number of children served by the human services program estimated to be
4352	enrolled in the local school district;
4353	(ii) the ages and grade levels of children served by the human services program
4354	estimated to be enrolled in the local school district;
4355	(iii) the subjects or hours of the school day for which children served by the human
4356	services program are estimated to enroll in the local school district;
4357	(iv) the direct contact information for the purposes of taking custody of a child served
4358	by the human services program during the school day in case of illness, disciplinary removal
4359	by a school, or emergency evacuation of a school; and
4360	(v) the method or arrangements for the transportation of children served by the
4361	human services program to and from the school; and
4362	(b) the following information provided by the school district:
4363	(i) enrollment procedures and forms;
4364	(ii) documentation required prior to enrollment from each of the child's previous
4365	schools of enrollment;
4366	(iii) if applicable, a schedule of the costs for tuition and school fees; and
4367	(iv) schools and services for which a child served by the human services program
4368	may be eligible.
4369	(4) Subject to Subsection (9) or (10), if a human services program serves any
4370	education entitled children whose custodial parents or legal guardians reside outside the
4371	state, then the program shall also provide an educational funding plan that includes
4372	evidence:
4373	(a) satisfactory to:
4374	(i) the office; and
4375	(ii) (A) the local school board of the school district in which the human services
4376	program will be operated; or
4377	(B) the school district superintendent of the school district in which the human
4378	services program will be operated; and
4379	(b) that all costs for educational services to be provided to the education entitled
4380	children, including tuition, and school fees approved by the local school board, shall be borne

by the human services program.

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(5) Subject to Subsection (9) or (10), and in accordance with Subsection (2), the

4383	human services program shall obtain and provide the office with a letter:
4384	(a) from the entity referred to in Subsection (2)(a)(ii):
4385	(i) approving the educational service plan referred to in Subsection (3); or
4386	(ii) (A) disapproving the educational service plan referred to in Subsection (3); and
4387	(B) listing the specific requirements the human services program must meet before
4388	approval is granted; and
4389	(b) from the entity referred to in Subsection (4)(a)(ii):
4390	(i) approving the educational funding plan, referred to in Subsection (4); or
4391	(ii) (A) disapproving the educational funding plan, referred to in Subsection (4); and
4392	(B) listing the specific requirements the human services program must meet before
4393	approval is granted.
4394	(6) Subject to Subsection (9), failure of a local school board or school district
4395	superintendent to respond to a proposed plan within 45 days of receipt of the plan is
4396	equivalent to approval of the plan by the local school board or school district superintendent
4397	if the human services program provides to the office:
4398	(a) proof that:
4399	(i) the human services program submitted the proposed plan to the local school board
4400	or school district superintendent; and
4401	(ii) more than 45 days have passed from the day on which the plan was submitted;
4402	and
4403	(b) an affidavit, on a form produced by the office, stating:
4404	(i) the date that the human services program submitted the proposed plan to the local
4405	school board or school district superintendent;
4406	(ii) that more than 45 days have passed from the day on which the plan was
4407	submitted; and
4408	(iii) that the local school board or school district superintendent described in
4409	Subsection (6)(b)(i) failed to respond to the proposed plan within 45 days from the day on
4410	which the plan was submitted.
4411	(7) If a licensee that is licensed to serve an education entitled child fails to comply
4412	with the licensee's approved educational service plan or educational funding plan, then:
4413	(a) the office may give the licensee notice of intent to revoke the licensee's license;
4414	and

- (b) if the licensee continues its noncompliance for more than 30 days after receipt of the notice described in Subsection (7)(a), the office may revoke the licensee's license.

 (8) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the
 - within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53G-6-405 apply.
 - (9) A human services program that is an accredited private school:
- 4422 (a) for purposes of Subsection (3):

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- 4423 (i) is only required to submit proof to the office that the accreditation of the private school is current; and
 - (ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);
 - (b) for purposes of Subsection (4):
 - (i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and
 - (ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (4)(a)(ii); and
 - (c) is not required to comply with Subsections (5) and (6).
- 4433 (10) Except for Subsection (8), the provisions of this section do not apply to a human services program that is a licensed or certified foster home [as defined in Section 4435 62A-2-101].

[62A-2-108.2.] <u>26B-2-117.</u> Licensing residential treatment programs and recovery residences -- Notification of local government.

- (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.
- (b) The categories referred to in Subsection (1)(a) may be based on differences in:
- 4444 (i) services offered:
- 4445 (ii) types of clients served;
- 4446 (iii) risks posed to the community; or

4447 (iv) other factors that make regulatory differences advisable.

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- (2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section [62A-2-106] 26B-2-104, the office shall establish and enforce rules that:
- (a) relate generally to all categories of residential treatment program and recovery residence licenses; and
- (b) relate to specific categories of residential treatment program and recovery residence licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.
- (3) (a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section [62A-2-106] 26B-2-104.
- (b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section [62A-2-106] 26B-2-104.
- (4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:
 - (a) the city in which the residential treatment program will be located; or
- (b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.
- (5) The notice described in Subsection (4) shall include the following information relating to the residential treatment program:
 - (a) an accurate description of the residential treatment program;
 - (b) the location where the residential treatment program will be operated;
 - (c) the services that will be provided by the residential treatment program;
 - (d) the type of clients that the residential treatment program will serve;
- 4474 (e) the category of license for which the residential treatment program is applying to the office:
 - (f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and
 - (g) any other information that the office may require by rule.

- 4479 (6) When submitting an application for a license to operate a residential treatment 4480 program, the applicant shall include with the application: (a) a copy of the notice described in Subsection (4); and 4481 4482 (b) proof that the applicant served the notice described in Subsection (4) on the 4483 governing body described in Subsection (4). 4484 [62A-2-108.4.] 26B-2-118 Request by local government. 4485 4486 (1) A local government may request that the office notify the local government of new 4487 human services program license applications for human services programs located within the 4488 local government's jurisdiction. 4489 (2) Subsection (1) does not apply to foster homes. 4490 [62A-2-108.8.] 26B-2-119. Residential support program -- Temporary homeless 4491 youth shelter. 4492 4493 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish age-appropriate and gender-appropriate sleeping 4494 4495 quarters in temporary homeless youth shelters, as defined in Section 80-5-102, that provide 4496 overnight shelter to minors. 4497 [62A-2-120.] 26B-2-120. Background check -- Direct access to children or 4498 4499 vulnerable adults. 4500 (1) As used in this section: 4501 (a) (i) "Applicant" means: 4502 (A) the same as that term is defined in Section [62A-2-101] 26B-2-101; 4503 (B) an individual who is associated with a licensee and has or will likely have direct 4504 access to a child or a vulnerable adult: 4505 (C) an individual who provides respite care to a foster parent or an adoptive parent on 4506 more than one occasion; 4507 (D) a department contractor;
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child or vulnerable adult who is receiving the service, if the individual is 12 years old or older

(F) a quardian submitting an application on behalf of an individual, other than the

(E) an individual who transports a child for a youth transportation company;

- and resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or
- (G) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
- 4516 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
 4517 of the Division of Child and Family Services or the Division of Juvenile Justice Services.
 - (b) "Application" means a background screening application to the office.
- 4519 (c) "Bureau" means the Bureau of Criminal Identification within the Department of 4520 Public Safety, created in Section 53-10-201.
- 4521 (d) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.
- (e) "Personal identifying information" means:
- 4524 (i) current name, former names, nicknames, and aliases;
- 4525 (ii) date of birth;

- 4526 (iii) physical address and email address;
- 4527 (iv) telephone number;
- 4528 (v) driver license or other government-issued identification;
- 4529 (vi) social security number:
- 4530 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified 4531 by the office; and
- 4532 (viii) other information specified by the office by rule made in accordance with Title 4533 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 4534 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall submit the following to the office:
- 4536 (i) personal identifying information;
- 4537 (ii) a fee established by the office under Section 63J-1-504; and
- 4538 (iii) a disclosure form, specified by the office, for consent for:
- 4539 (A) an initial background check upon submission of the information described under 4540 this Subsection (2)(a);
- 4541 (B) ongoing monitoring of fingerprints and registries until no longer associated with a 4542 licensee for 90 days;

4543	(C) a background check when the office determines that reasonable cause exists;
4544	and
4545	(D) retention of personal identifying information, including fingerprints, for monitoring
4546	and notification as described in Subsections (3)(d) and (4).
4547	(b) In addition to the requirements described in Subsection (2)(a), if an applicant
4548	resided outside of the United States and its territories during the five years immediately
4549	preceding the day on which the information described in Subsection (2)(a) is submitted to the
4550	office, the office may require the applicant to submit documentation establishing whether the
4551	applicant was convicted of a crime during the time that the applicant resided outside of the
4552	United States or its territories.
4553	(3) The office:
4554	(a) shall perform the following duties as part of a background check of an applicant:
4555	(i) check state and regional criminal background databases for the applicant's criminal
4556	history by:
4557	(A) submitting personal identifying information to the bureau for a search; or
4558	(B) using the applicant's personal identifying information to search state and regional
4559	criminal background databases as authorized under Section 53-10-108;
4560	(ii) submit the applicant's personal identifying information and fingerprints to the
4561	bureau for a criminal history search of applicable national criminal background databases;
4562	(iii) search the [Department of Human Services,] Division of Child and Family
4563	Services' Licensing Information System described in Section 80-2-1002;
4564	(iv) search the [Department of Human Services,] Division of Aging and Adult Services'
4565	vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
4566	(v) search the juvenile court records for substantiated findings of severe child abuse
4567	or neglect described in Section 80-3-404; and
4568	(vi) search the juvenile court arrest, adjudication, and disposition records, as provided
4569	under Section 78A-6-209;
4570	(b) shall conduct a background check of an applicant for an initial background check
4571	upon submission of the information described under Subsection (2)(a);
4572	(c) may conduct all or portions of a background check of an applicant, as provided by
4573	rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act:

4575	(i) for an annual renewal; or
4576	(ii) when the office determines that reasonable cause exists;
4577	(d) may submit an applicant's personal identifying information, including fingerprints,
4578	to the bureau for checking, retaining, and monitoring of state and national criminal
4579	background databases and for notifying the office of new criminal activity associated with the
4580	applicant;
4581	(e) shall track the status of an approved applicant under this section to ensure that an
4582	approved applicant is not required to duplicate the submission of the applicant's fingerprints if
4583	the applicant applies for:
4584	(i) more than one license;
4585	(ii) direct access to a child or a vulnerable adult in more than one human services
4586	program; or
4587	(iii) direct access to a child or a vulnerable adult under a contract with the department;
4588	(f) shall track the status of each license and each individual with direct access to a
4589	child or a vulnerable adult and notify the bureau within 90 days after the day on which the
4590	license expires or the individual's direct access to a child or a vulnerable adult ceases;
4591	(g) shall adopt measures to strictly limit access to personal identifying information
4592	solely to the individuals responsible for processing and entering the applications for
4593	background checks and to protect the security of the personal identifying information the
4594	office reviews under this Subsection (3);
4595	(h) as necessary to comply with the federal requirement to check a state's child abuse
4596	and neglect registry regarding any individual working in a congregate care program, shall:
4597	(i) search the [Department of Human Services,] Division of Child and Family Services'
4598	Licensing Information System described in Section 80-2-1002; and
4599	(ii) require the child abuse and neglect registry be checked in each state where an
4600	applicant resided at any time during the five years immediately preceding the day on which
4601	the applicant submits the information described in Subsection (2)(a) to the office; and
4602	(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
4603	Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
4604	checks.

Subsection (3), the bureau shall check against state and regional criminal background

(4) (a) With the personal identifying information the office submits to the bureau under

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databases for the applicant's criminal history. 4607

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- (b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.
- (c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:
- (i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and
- (ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.
- (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:
- (i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and
- (ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.
- (e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.
- (f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:
 - (i) discard and destroy any retained fingerprints; and
- (ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.
- (5) (a) After conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:

- 4639 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;
- 4641 (ii) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;
- 4643 (iii) prostitution;

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- 4644 (iv) an offense included in:
- 4645 (A) Title 76, Chapter 5, Offenses Against the Individual;
- 4646 (B) Section 76-5b-201, Sexual Exploitation of a Minor;
- 4647 (C) Section 76-5b-201.1, Aggravated Sexual Exploitation of a Minor; or
- (D) Title 76, Chapter 7, Offenses Against the Family;
- (v) aggravated arson, as described in Section 76-6-103;
- (vi) aggravated burglary, as described in Section 76-6-203;
- 4651 (vii) aggravated robbery, as described in Section 76-6-302;
- 4652 (viii) identity fraud crime, as described in Section 76-6-1102; or
- 4653 (ix) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).
- (b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).
 - (c) If the applicant will be working in a program serving only adults whose only impairment is a mental health diagnosis, including that of a serious mental health disorder, with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a) do not apply, and the office shall conduct a comprehensive review as described in Subsection (6).
 - (6) (a) The office shall conduct a comprehensive review of an applicant's background check if the applicant:
 - (i) has an open court case or a conviction for any felony offense, not described in Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on which the applicant submits the application;
- 4669 (ii) has an open court case or a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G,

- Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within three years before 4671 the day on which the applicant submits information to the office under Subsection (2) for a 4672 background check; 4673
- 4674 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more 4675 than three years before the day on which the applicant submitted information under 4676 Subsection (2)(a);
- 4677 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a): 4678
- 4679 (v) has a listing in the [Department of Human Services,] Division of Child and Family 4680 Services' Licensing Information System described in Section 80-2-1002;
- (vi) has a listing in the [Department of Human Services,] Division of Aging and Adult 4681 4682 Services' vulnerable adult abuse, neglect, or exploitation database described in Section 4683 62A-3-311.1;
- 4684 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse 4685 or neglect described in Section 80-3-404;
 - (viii) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:
 - (A) under 28 years old; or

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- (B) 28 years old or older and has been convicted of, has pleaded no contest to, or is 4689 4690 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor 4691 offense described in Subsection (5)(a):
 - (ix) has a pending charge for an offense described in Subsection (5)(a); or
 - (x) is an applicant described in Subsection (5)(c).
- (b) The comprehensive review described in Subsection (6)(a) shall include an 4694 4695 examination of:
- 4696 (i) the date of the offense or incident;
 - (ii) the nature and seriousness of the offense or incident;
- (iii) the circumstances under which the offense or incident occurred; 4698
- 4699 (iv) the age of the perpetrator when the offense or incident occurred:
- (v) whether the offense or incident was an isolated or repeated incident; 4700
- 4701 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable 4702 adult, including:

- 4703 (A) actual or threatened, nonaccidental physical, mental, or financial harm; 4704 (B) sexual abuse; (C) sexual exploitation; or 4705 4706 (D) negligent treatment: 4707 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric 4708 treatment received, or additional academic or vocational schooling completed: 4709 (viii) the applicant's risk of harm to clientele in the program or in the capacity for which 4710 the applicant is applying; and 4711 (ix) any other pertinent information presented to or publicly available to the committee 4712 members. 4713 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the 4714 office shall deny an application to an applicant if the office finds that approval would likely 4715 create a risk of harm to a child or a vulnerable adult. 4716 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the 4717 office may not deny an application to an applicant solely because the applicant was 4718 convicted of an offense that occurred 10 or more years before the day on which the applicant 4719 submitted the information required under Subsection (2)(a) if: 4720 (i) the applicant has not committed another misdemeanor or felony offense after the 4721 day on which the conviction occurred; and 4722 (ii) the applicant has never been convicted of an offense described in Subsection 4723 (14)(c). 4724 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the 4725 office may make rules, consistent with this [chapter] part, to establish procedures for the 4726 comprehensive review described in this Subsection (6). 4727 (7) Subject to Subsection (10), the office shall approve an application to an applicant 4728 who is not denied under Subsection (5), (6), or (14). 4729 (8) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant 4730 4731 under Subsection (12), without requiring that the applicant be directly supervised, if the office:
- 4732 (i) is awaiting the results of the criminal history search of national criminal background 4733 databases; and
 - (ii) would otherwise approve an application of the applicant under Subsection (7).

- 4735 (b) The office may conditionally approve an application of an applicant, for a
 4736 maximum of one year after the day on which the office sends written notice to the applicant
 4737 under Subsection (12), without requiring that the applicant be directly supervised if the office:
- 4738 (i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and
 - (ii) would otherwise approve an application of the applicant under Subsection (7).
- 4741 (c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).
- 4744 (9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):
 - (a) the individual is associated with the licensee or department contractor and:
 - (i) the individual's application is approved by the office under this section;
- 4748 (ii) the individual's application is conditionally approved by the office under Subsection 4749 (8); or
 - (iii) (A) the individual has submitted the background check information described in Subsection (2) to the office;
 - (B) the office has not determined whether to approve the applicant's application; and
- 4753 (C) the individual is directly supervised by an individual who has a current background 4754 screening approval issued by the office under this section and is associated with the licensee 4755 or department contractor;
 - (b) (i) the individual is associated with the licensee or department contractor;
- 4757 (ii) the individual has a current background screening approval issued by the office 4758 under this section;
- 4759 (iii) one of the following circumstances, that the office has not yet reviewed under 4760 Subsection (6), applies to the individual:
 - (A) the individual was charged with an offense described in Subsection (5)(a);
- 4762 (B) the individual is listed in the Licensing Information System, described in Section 80-2-1002:
- 4764 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;
 - (D) the individual has a record in the juvenile court of a substantiated finding of

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- severe child abuse or neglect, described in Section 80-3-404; or

 (E) the individual has a record of an adjudication in juvenile court for an act that, if

 committed by an adult, would be a felony or a misdemeanor as described in Subsection
- committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a) or (6); and
- 4771 (iv) the individual is directly supervised by an individual who:
- 4772 (A) has a current background screening approval issued by the office under this section; and
- 4774 (B) is associated with the licensee or department contractor;
- 4775 (c) the individual:

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- 4776 (i) is not associated with the licensee or department contractor; and
- 4777 (ii) is directly supervised by an individual who:
- 4778 (A) has a current background screening approval issued by the office under this section; and
 - (B) is associated with the licensee or department contractor;
- 4781 (d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
 - (e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;
 - (f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
 - (g) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.
 - (10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.
 - (11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.
 - (12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give notice of the clearance status to:
- 4797 (i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

- 4799 (ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.
 - (b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).
 - (c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection [62A-2-111] 26B-2-114 (2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.
 - (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this [chapter] part:
 - (i) defining procedures for the challenge of the office's background check decision described in Subsection (12)(c); and
 - (ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.
 - (13) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule, is exempt from this section. This exemption does not extend to a program director or a member, as defined by Section 62A-2-108, of the program.
 - (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care program, an applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:
 - (i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
 - (ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or

- adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.
- 4833 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:
- 4834 (i) federal law or rule permits otherwise; or

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- 4835 (ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:
 - (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
- 4838 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (5).
- 4840 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to
 4841 an applicant seeking a position in a congregate care program, an applicant for a one-time
 4842 adoption, an applicant to become a prospective foster parent, or an applicant to become a
 4843 prospective adoptive parent if the applicant has been convicted of:
 - (i) a felony involving conduct that constitutes any of the following:
 - (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
- 4846 (B) commission of domestic violence in the presence of a child, as described in 4847 Section 76-5-114;
 - (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
 - (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- 4850 (E) aggravated murder, as described in Section 76-5-202;
- 4851 (F) murder, as described in Section 76-5-203;
- 4852 (G) manslaughter, as described in Section 76-5-205;
- 4853 (H) child abuse homicide, as described in Section 76-5-208;
- 4854 (I) homicide by assault, as described in Section 76-5-209:
- 4855 (J) kidnapping, as described in Section 76-5-301;
- 4856 (K) child kidnapping, as described in Section 76-5-301.1;
- 4857 (L) aggravated kidnapping, as described in Section 76-5-302;
- 4858 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 4859 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses:
- 4860 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 4861 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1:
- 4862 (Q) aggravated arson, as described in Section 76-6-103;

- 4863 (R) aggravated burglary, as described in Section 76-6-203;
- 4864 (S) aggravated robbery, as described in Section 76-6-302; or
- 4865 (T) domestic violence, as described in Section 77-36-1; or
- 4866 (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).
- (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:
- 4873 (i) aggravated assault, as described in Section 76-5-103;
 - (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 4875 (iii) mayhem, as described in Section 76-5-105;

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- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
 - (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 4878 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances 4879 Act;
 - (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
 - (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
 - (e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102.
- 4889 [62A-2-121.] 26B-2-121. Access to abuse and neglect information.
- 4890 (1) As used in this section:
- 4891 (a) "Direct service worker" means the same as that term is defined in Section 4892 [62A-5-101] 26B-X-XXX.
- (b) "Personal care attendant" means the same as that term is defined in Section [62A-3-101] 26B-X-XXX.

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4895	(2) With respect to a licensee, a direct service worker, or a personal care attendant,
4896	the department may access only the Licensing Information System of the Division of Child
4897	and Family Services created by Section 80-2-1002 and juvenile court records under
4898	Subsection 80-3-404(4), for the purpose of:
4899	(a) (i) determining whether a person associated with a licensee, with direct access to
4900	children:
4901	(A) is listed in the Licensing Information System; or
4902	(B) has a substantiated finding by a juvenile court of a severe type of child abuse or
4903	neglect under Subsections 80-3-404(1) and (2); and
4904	(ii) informing a licensee that a person associated with the licensee:

(A) is listed in the Licensing Information System; or

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- 4906 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2);
 - (b) (i) determining whether a direct service worker:
 - (A) is listed in the Licensing Information System; or
- 4910 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or 4911 neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a direct service worker or the direct service worker's employer that the direct service worker:
 - (A) is listed in the Licensing Information System; or
- 4915 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or 4916 neglect under Subsections 80-3-404(1) and (2); or
 - (c) (i) determining whether a personal care attendant:
 - (A) is listed in the Licensing Information System; or
- 4919 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or 4920 neglect under Subsections 80-3-404(1) and (2); and
- 4921 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a 4922 personal care attendant:
 - (A) is listed in the Licensing Information System; or
- 4924 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or 4925 neglect under Subsections 80-3-404(1) and (2).
 - (3) Notwithstanding Subsection (2), the department may access the Division of Child

and Family Services' Management Information System under Section 80-2-1001: 4927 4928 (a) for the purpose of licensing and monitoring foster parents; (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and 4929 4930 (c) for the purpose described in Section 26B-1-211. 4931 (4) The department shall receive and process personal identifying information under 4932 Subsection 62A-2-120(1) for the purposes described in Subsection (2). 4933 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative 4934 Rulemaking Act, consistent with this [chapter] part, defining the circumstances under which 4935 a person may have direct access or provide services to children when: 4936 (a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002; or 4937 4938 (b) juvenile court records show that a court made a substantiated finding under 4939 Section 80-3-404, that the person committed a severe type of child abuse or neglect. 4940 [62A-2-122.] 26B-2-122. Access to vulnerable adult abuse and neglect 4941 information. 4942 4943 (1) For purposes of this section: (a) "Direct service worker" means the same as that term is defined in Section 4944 4945 [62A-5-101] 26B-X-XXX. (b) "Personal care attendant" means the same as that term is defined in Section 4946 4947 [62A-3-101] 26B-X-XXX. 4948 (2) With respect to a licensee, a direct service worker, or a personal care attendant, 4949 the department may access the database created by Section [62A-3-311.1] 26B-X-XXX for 4950 the purpose of: 4951 (a) (i) determining whether a person associated with a licensee, with direct access to 4952 vulnerable adults, has a supported or substantiated finding of: 4953 (A) abuse; 4954 (B) neglect; or 4955 (C) exploitation; and 4956 (ii) informing a licensee that a person associated with the licensee has a supported or 4957 substantiated finding of: 4958 (A) abuse;

(B) neglect; or 4959 4960 (C) exploitation; (b) (i) determining whether a direct service worker has a supported or substantiated 4961 4962 finding of: 4963 (A) abuse; 4964 (B) neglect; or 4965 (C) exploitation; and (ii) informing a direct service worker or the direct service worker's employer that the 4966 4967 direct service worker has a supported or substantiated finding of: 4968 (A) abuse; 4969 (B) neglect; or 4970 (C) exploitation; or 4971 (c) (i) determining whether a personal care attendant has a supported or 4972 substantiated finding of: 4973 (A) abuse; 4974 (B) neglect; or 4975 (C) exploitation; and 4976 (ii) informing a person described in Subsections [62A-3-101] 26B-X-XXX (9)(a)(i) 4977 through (iv) that a personal care attendant has a supported or substantiated finding of: 4978 (A) abuse; 4979 (B) neglect; or 4980 (C) exploitation. 4981 (3) The department shall receive and process personal identifying information under Subsection [62A-2-120] 26B-2-126 (1) for the purposes described in Subsection (2). 4982 4983 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative 4984 Rulemaking Act, consistent with this [chapter] part and [Title 62A, Chapter 3, Part 3] 4985 Chapter X, Part X, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the 4986 circumstances under which a person may have direct access or provide services to 4987 vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section [62A-3-311.1] 26B-X-XXX as having a supported or 4988

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substantiated finding of abuse, neglect, or exploitation.

4991	[62A-2-123.] <u>26B-2-123.</u> Congregate care program regulation.
4992	(1) A congregate care program may not use a cruel, severe, unusual, or unnecessary
4993	practice on a child, including:
4994	(a) a strip search unless the congregate care program determines and documents
4995	that a strip search is necessary to protect an individual's health or safety;
4996	(b) a body cavity search unless the congregate care program determines and
4997	documents that a body cavity search is necessary to protect an individual's health or safety;
4998	(c) inducing pain to obtain compliance;
4999	(d) hyperextending joints;
5000	(e) peer restraints;
5001	(f) discipline or punishment that is intended to frighten or humiliate;
5002	(g) requiring or forcing the child to take an uncomfortable position, including squatting
5003	or bending;
5004	(h) for the purpose of punishing or humiliating, requiring or forcing the child to repeat
5005	physical movements or physical exercises such as running laps or performing push-ups;
5006	(i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
5007	(j) denying an essential program service;
5008	(k) depriving the child of a meal, water, rest, or opportunity for toileting;
5009	(I) denying shelter, clothing, or bedding;
5010	(m) withholding personal interaction, emotional response, or stimulation;
5011	(n) prohibiting the child from entering the residence;
5012	(o) abuse as defined in Section 80-1-102; and
5013	(p) neglect as defined in Section 80-1-102.
5014	(2) Before a congregate care program may use a restraint or seclusion, the
5015	congregate care program shall:
5016	(a) develop and implement written policies and procedures that:
5017	(i) describe the circumstances under which a staff member may use a restraint or
5018	seclusion;
5019	(ii) describe which staff members are authorized to use a restraint or seclusion;
5020	(iii) describe procedures for monitoring a child that is restrained or in seclusion;
5021	(iv) describe time limitations on the use of a restraint or seclusion;
5022	(v) require immediate and continuous review of the decision to use a restraint or

5023	seclusion;
5024	(vi) require documenting the use of a restraint or seclusion;
5025	(vii) describe record keeping requirements for records related to the use of a restraint
5026	or seclusion;
5027	(viii) to the extent practicable, require debriefing the following individuals if debriefing
5028	would not interfere with an ongoing investigation, violate any law or regulation, or conflict with
5029	a child's treatment plan:
5030	(A) each witness to the event;
5031	(B) each staff member involved; and
5032	(C) the child who was restrained or in seclusion;
5033	(ix) include a procedure for complying with Subsection (5); and
5034	(x) provide an administrative review process and required follow up actions after a
5035	child is restrained or put in seclusion; and
5036	(b) consult with the office to ensure that the congregate care program's written
5037	policies and procedures align with applicable law.
5038	(3) A congregate care program:
5039	(a) may use a passive physical restraint only if the passive physical restraint is
5040	supported by a nationally or regionally recognized curriculum focused on non-violent
5041	interventions and de-escalation techniques;
5042	(b) may not use a chemical or mechanical restraint unless the office has authorized
5043	the congregate care program to use a chemical or mechanical restraint;
5044	(c) shall ensure that a staff member that uses a restraint on a child is:
5045	(i) properly trained to use the restraint; and
5046	(ii) familiar with the child and if the child has a treatment plan, the child's treatment
5047	plan; and
5048	(d) shall train each staff member on how to intervene if another staff member fails to
5049	follow correct procedures when using a restraint.
5050	(4) (a) A congregate care program:
5051	(i) may use seclusion if:
5052	(A) the purpose for the seclusion is to ensure the immediate safety of the child or
5053	others; and
5054	(B) no less restrictive intervention is likely to ensure the safety of the child or others:

5055	and
5056	(ii) may not use seclusion:
5057	(A) for coercion, retaliation, or humiliation; or
5058	(B) due to inadequate staffing or for the staff's convenience.
5059	(b) While a child is in seclusion, a staff member who is familiar to the child shall
5060	actively supervise the child for the duration of the seclusion.
5061	(5) Subject to the office's review and approval, a congregate care program shall
5062	develop:
5063	(a) suicide prevention policies and procedures that describe:
5064	(i) how the congregate care program will respond in the event a child exhibits
5065	self-injurious, self-harm, or suicidal behavior;
5066	(ii) warning signs of suicide;
5067	(iii) emergency protocol and contacts;
5068	(iv) training requirements for staff, including suicide prevention training;
5069	(v) procedures for implementing additional supervision precautions and for removing
5070	any additional supervision precautions;
5071	(vi) suicide risk assessment procedures;
5072	(vii) documentation requirements for a child's suicide ideation and self-harm;
5073	(viii) special observation precautions for a child exhibiting warning signs of suicide;
5074	(ix) communication procedures to ensure all staff are aware of a child who exhibits
5075	warning signs of suicide;
5076	(x) a process for tracking suicide behavioral patterns; and
5077	(xi) a post-intervention plan with identified resources; and
5078	(b) based on state law and industry best practices, policies and procedures for
5079	managing a child's behavior during the child's participation in the congregate care program.
5080	(6) (a) A congregate care program:
5081	(i) subject to Subsection (6)(b), shall facilitate weekly confidential voice-to-voice
5082	communication between a child and the child's parents, guardian, foster parents, and
5083	siblings, as applicable;
5084	(ii) shall ensure that the communication described in Subsection (6)(a)(i) complies
5085	with the child's treatment plan, if any; and
5086	(iii) may not use family contact as an incentive for proper behavior or withhold family

5087	contact as a punishment.
5088	(b) For the communication described in Subsection (6)(a)(i), a congregate care
5089	program may not:
5090	(i) deny the communication unless state law or a court order prohibits the
5091	communication; or
5092	(ii) modify the frequency or form of the communication unless:
5093	(A) the office approves the modification; or
5094	(B) state law or a court order prohibits the frequency or the form of the
5095	communication.
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5097	[62A-2-125.] <u>26B-2-124.</u> Congregate care program requirements.
5098	(1) As used in this section, "disruption plan" means a child specific plan used:
5099	(a) when the private-placement child stops receiving services from a congregate care
5100	program; and
5101	(b) for transporting a private-placement child to a parent or guardian or to another
5102	congregate care program.
5103	(2) A congregate care program shall keep the following for a private-placement child
5104	whose parent or guardian lives outside the state:
5105	(a) regularly updated contact information for the parent or guardian that lives outside
5106	the state; and
5107	(b) a disruption plan.
5108	(3) If a private-placement child whose parent or guardian resides outside the state
5109	leaves a congregate care program without following the child's disruption plan, the
5110	congregate care program shall:
5111	(a) notify the parent or guardian, office, and local law enforcement authorities;
5112	(b) assist the state in locating the private-placement child; and
5113	(c) after the child is located, transport the private-placement child:
5114	(i) to a parent or guardian;
5115	(ii) back to the congregate care program; or
5116	(iii) to another congregate care program.
5117	(4) This section does not apply to a guardian that is a state or agency.
5118	(5) The office shall make rules in accordance with Title 63G. Chapter 3. Utah

5119	Administrative Rulemaking Act, describing:
5120	(a) additional mandatory provisions for a disruption plan; and
5121	(b) how a congregate care program shall notify the office when a private-placement
5122	child begins receiving services.
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5124	[62A-2-128.] <u>26B-2-125.</u> Youth transportation company registration.
5125	(1) The office shall establish a registration system for youth transportation companies.
5126	(2) The office shall establish a fee:
5127	(a) under Section 63J-1-504 that does not exceed \$500; and
5128	(b) that when paid by all registrants generates sufficient revenue to cover or
5129	substantially cover the costs for the creation and maintenance of the registration system.
5130	(3) A youth transportation company shall:
5131	(a) register with the office; and
5132	(b) provide the office:
5133	(i) proof of a business insurance policy that provides at least \$1,000,000 in coverage;
5134	and
5135	(ii) a valid business license from the state where the youth transportation company is
5136	headquartered.
5137	(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5138	office shall make rules to implement this section.
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5140	[62A-2-108.5.] <u>26B-2-126.</u> Notification requirement for child-placing agencies
5141	that provide foster home services Rulemaking authority.
5142	(1) The office shall require a child-placing agency that provides foster home services
5143	to notify a foster parent that if the foster parent signs as the responsible adult for a foster
5144	child to receive a driver license under Section 53-3-211:
5145	(a) the foster parent is jointly and severally liable with the minor for civil compensatory
5146	damages caused by the minor when operating a motor vehicle upon a highway as provided
5147	under Subsections 53-3-211(2) and (4); and
5148	(b) the foster parent may file with the Driver License Division a verified written request
5149	that the learner permit or driver license be canceled in accordance with Section 53-3-211 if
5150	the foster child no longer resides with the foster parent.

5151	(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5152	office may make rules establishing the procedures for a child-placing agency to provide the
5153	notification required under this section.

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- 5155 [62A-2-108.6.] 26B-2-127. Child placing licensure requirements -- Prohibited 5156 acts.
- 5157 (1) As used in this section:
- 5158 (a) (i) "Advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business. 5159
- 5160 (ii) "Advertisement" includes a statement or representation described in Subsection (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, 5161 5162 circular, billboard, banner, Internet website, social media, or sign.
 - (b) "Birth parent" means the same as that term is defined in Section 78B-6-103.
 - (c) "Clearly and conspicuously disclose" means the same as that term is defined in Section 13-11a-2.
 - (d) (i) "Matching advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business to provide the assistance described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange described in Subsection (3)(a)(ii).
 - (ii) "Matching advertisement" includes a statement or representation described in Subsection (1)(d)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.
 - (2) (a) Subject to Section 78B-24-205, a person may not engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the office in accordance with this [chapter] part.
- 5176 (b) If a child-placing agency's license is suspended or revoked in accordance with this 5177 [chapter] part, the care, control, or custody of any child who is in the care, control, or 5178 custody of the child-placing agency shall be transferred to the Division of Child and Family 5179 Services.
 - (3) (a) (i) An attorney, physician, or other person may assist:
- 5181 (A) a birth parent to identify or locate a prospective adoptive parent who is interested 5182 in adopting the birth parent's child; or

- (B) a prospective adoptive parent to identify or locate a child to be adopted.
- (ii) A payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may not be made for the assistance described in Subsection (3)(a)(i).
 - (b) An attorney, physician, or other person may not:
- (i) issue or cause to be issued to any person a card, sign, or device indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i):
- (ii) cause, permit, or allow any sign or marking indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), on or in any building or structure;
- (iii) announce, cause, permit, or allow an announcement indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), to appear in any newspaper, magazine, directory, on radio or television, or an Internet website relating to a business;
 - (iv) announce, cause, permit, or allow a matching advertisement; or
- (v) announce, cause, permit, or allow an advertisement that indicates or implies the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the following terms:
- 5203 (A) "comprehensive";
- 5204 (B) "complete";

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- 5205 (C) "one-stop";
- 5206 (D) "all-inclusive"; or
- 5207 (E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through 5208 (D).
- (c) An attorney, physician, or other person who is not licensed by the office shall clearly and conspicuously disclose in any print media advertisement or written contract regarding adoption services or adoption-related services that the attorney, physician, or other person is not licensed to provide adoption services by the office.
- 5213 (4) A person who intentionally or knowingly violates Subsection (2) or (3) is guilty of a third degree felony.

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5215	(5) This section does not preclude payment of fees for medical, legal, or other lawful
5216	services rendered in connection with the care of a mother, delivery and care of a child, or
5217	lawful adoption proceedings.
5218	(6) In accordance with federal law, only an agent or employee of the Division of Child
5219	and Family Services or of a licensed child-placing agency may certify to United States
5220	Citizenship and Immigration Services that a family meets the preadoption requirements of
5221	the Division of Child and Family Services.
5222	(7) A licensed child-placing agency or an attorney practicing in this state may not place
5223	a child for adoption, either temporarily or permanently, with an individual who would not be
5224	qualified for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137.
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5226	[62A-2-116.5.] <u>26B-2-128.</u> Numerical limit of foster children in a foster home.
5227	(1) Except as provided in Subsection (2) or (3), no more than:
5228	(a) four foster children may reside in the foster home of a licensed foster parent; or
5229	(b) three foster children may reside in the foster home of a certified foster parent.
5230	(2) When placing a sibling group into a foster home, the limits in Subsection (1) may
5231	be exceeded if:
5232	(a) no other foster children reside in the foster home;
5233	(b) only one other foster child resides in the foster home at the time of a sibling
5234	group's placement into the foster home; or
5235	(c) a sibling group re-enters foster care and is placed into the foster home where the
5236	sibling group previously resided.
5237	(3) When placing a child into a foster home, the limits in Subsection (1) may be
5238	exceeded:
5239	(a) to place a child into a foster home where a sibling of the child currently resides; or
5240	(b) to place a child in a foster home where the child previously resided.
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5242	[62A-2-117.] <u>26B-2-129.</u> Licensure of tribal foster homes.
5243	(1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian
5244	tribes may develop and implement tribal foster home standards.

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of a tribal foster home for an Indian child and siblings of that Indian child, both on and off

(2) The office shall give full faith and credit to an Indian tribe's certification or licensure

- Indian country, according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.
- 5249 (3) If the Indian tribe has not developed standards, the office shall license tribal foster 5250 homes pursuant to this [chapter] part.

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- [62A-2-117.5.] <u>26B-2-130.</u> Foster care by a child's relative.
- 5253 (1) As used in this section:
- 5254 (a) "Custody" and "temporary custody" mean the same as those terms are defined in Section 80-2-102.
 - (b) "Relative" means the same as that term is defined in Section 80-3-102.
 - (1) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services. If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.
- 5263 [(2) For purposes of this section:
- 5264 (a) "Custody" and "temporary custody" mean the same as those terms are defined in Section 80-2-102.
- 5266 (b) "Relative" means the same as that term is defined in Section 80-3-102.]

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- [62A-2-127.] <u>26B-2-131.</u> Child-placing agency responsibility for educational services -- Payment of costs.
- (1) A child-placing agency shall ensure that the requirements of Subsections 53G-6-202(2) and 53G-6-203(1) are met through the provision of appropriate educational services for all children served in the state by the child-placing agency.
- (2) (a) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides outside the state, the child-placing agency shall pay all educational costs required under Sections 53G-6-306 and 53G-7-503.
- 5277 (b) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides within the state, then the

- 5279 child-placing agency shall pay all educational costs required under Section 53G-7-503.
- 5280 (3) A child in the custody or under the care of a Utah state agency is exempt from the payment of fees required under Subsection (2).
 - (4) A public school shall admit any child living within the public school's boundaries who is under the supervision of a child-placing agency upon payment by the child-placing agency of the tuition and fees required under Subsection (2).

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[62A-2-115.2.] 26B-2-132. Child-placing agency proof of authority in a proceeding.

A child-placing agency is not required to present the child-placing agency's license issued under this [chapter] part, the child placing agency's certificate of incorporation, or proof of the child-placing agency's authority to consent to adoption, as proof of the child-placing agency's authority in any proceeding in which the child-placing agency is an interested party, unless the court or a party to the proceeding requests that the child-placing agency or the child-placing agency's representative establish proof of authority.

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- [62A-2-115.1.] 26B-2-133. Injunctive relief and civil penalty for unlawful child placing -- Enforcement by county attorney or attorney general.
- (1) The office or another interested person may commence an action in [district] court to enjoin any person, agency, firm, corporation, or association from violating Section [62A-2-108.6] 26B-2-110.
 - (2) The office shall:
- 5301 (a) solicit information from the public relating to violations of Section [62A-2-108.6] 5302 26B-2-110; and
 - (b) upon identifying a violation of Section [62A-2-108.6] 26B-2-110:
- 5304 (i) send a written notice to the person who violated Section [62A-2-108.6] 26B-2-110 5305 that describes the alleged violation; and
 - (ii) notify the following persons of the alleged violation:
 - (A) the local county attorney; and
 - (B) the Division of Professional Licensing.
- 5309 (3) (a) A county attorney or the attorney general shall institute legal action as
 5310 necessary to enforce the provisions of Section 62A-2-108.6 after being informed of an

5311	alleged violation.
5312	(b) If a county attorney does not take action within 30 days after the day on which the
5313	county attorney is informed of an alleged violation of Section 62A-2-108.6, the attorney
5314	general may be requested to take action, and shall then institute legal proceedings in place

- 5315 of the county attorney.
- (4) (a) In addition to the remedies provided in Subsections (1) and (3), any person, agency, firm, corporation, or association found to be in violation of Section [62A-2-108.6]

 5318 26B-2-110 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than \$10,000 for each violation.
- 5320 (b) Each act in violation of Section [62A-2-108.6] 26B-2-110, including each placement or attempted placement of a child, is a separate violation.
- 5322 (5) (a) The amount recovered as a penalty under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.
 - (b) If two or more governmental entities are involved in the prosecution, the court shall apportion the penalty among the entities, according to the entities' involvement.
 - (6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Part 2. Health Care Facility Licensing and Inspection.

5333 [26-21-2.] <u>26B-2-201.</u> Definitions.

As used in this [chapter] part:

- (1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.
- 5336 (2) "Activities of daily living" means essential activities including:
- 5337 (a) dressing;
- 5338 (b) eating;

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- 5339 (c) grooming;
- 5340 (d) bathing;
- 5341 (e) toileting;
- 5342 (f) ambulation;

5343	(g) transferring; and
5344	(h) self-administration of medication.
5345	(3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical
5346	services to patients not requiring hospitalization.
5347	(4) "Assistance with activities of daily living" means providing of or arranging for the
5348	provision of assistance with activities of daily living.
5349	(5) (a) "Assisted living facility" means:
5350	(i) a type I assisted living facility, which is a residential facility that provides assistance
5351	with activities of daily living and social care to two or more residents who:
5352	(A) require protected living arrangements; and
5353	(B) are capable of achieving mobility sufficient to exit the facility without the
5354	assistance of another person; and
5355	(ii) a type II assisted living facility, which is a residential facility with a home-like setting
5356	that provides an array of coordinated supportive personal and health care services available
5357	24 hours per day to residents who have been assessed under department rule to need any
5358	of these services.
5359	(b) Each resident in a type I or type II assisted living facility shall have a service plan
5360	based on the assessment, which may include:
5361	(i) specified services of intermittent nursing care;
5362	(ii) administration of medication; and
5363	(iii) support services promoting residents' independence and self sufficiency.
5364	(6) "Birthing center" means a facility that:
5365	(a) receives maternal clients and provides care during pregnancy, delivery, and
5366	immediately after delivery; and
5367	(b) (i) is freestanding; or
5368	(ii) is not freestanding, but meets the requirements for an alongside midwifery unit
5369	described in Subsection [26-21-29] <u>26B-2-228</u> (7).
5370	(7) "Committee" means the Health Facility Committee created in Section 26B-1-204.
5371	(8) "Consumer" means any person not primarily engaged in the provision of health
5372	care to individuals or in the administration of facilities or institutions in which such care is
5373	provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity
5374	involved in the provision of health care, and does not receive, either directly or through his

spouse, more than 1/10 of his gross income from any entity or activity relating to health care.

- 5376 (9) "End stage renal disease facility" means a facility which furnishes staff-assisted 5377 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient 5378 basis.
 - (10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.
 - (11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.
 - (12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.
 - (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned or operated by health maintenance organizations, end stage renal disease facilities, and any other health care facility which the committee designates by rule.
 - (b) "Health care facility" does not include the offices of private physicians or dentists, whether for individual or group practice, except that it does include an abortion clinic.
 - (14) "Health maintenance organization" means an organization, organized under the laws of any state which:
 - (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or
 - (b) (i) provides or otherwise makes available to enrolled participants at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;
 - (ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and
 - (iii) provides physicians' services primarily directly through physicians who are either employees or partners of such organizations, or through arrangements with individual

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physicians or one or more groups of physicians organized on a group practice or individual 5407 5408 practice basis.

- (15) (a) "Home health agency" means an agency, organization, or facility or a 5409 5410 subdivision of an agency, organization, or facility which employs two or more direct care staff 5411 persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services 5412 5413 on a visiting basis.
- 5414 (b) "Home health agency" does not mean an individual who provides services under 5415 the authority of a private license.
- 5416 (16) "Hospice" means a program of care for the terminally ill and their families which 5417 occurs in a home or in a health care facility and which provides medical, palliative, 5418 psychological, spiritual, and supportive care and treatment.
 - (17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:
 - (a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services:
 - (b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or
 - (c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.
 - (18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.
 - (19) "Resident" means a person 21 years old or older who:
- 5434 (a) as a result of physical or mental limitations or age requires or requests services 5435 provided in an assisted living facility; and
- 5436 (b) does not require intensive medical or nursing services as provided in a hospital or 5437 nursing care facility.
 - (20) "Small health care facility" means a four to 16 bed facility that provides licensed

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5439	health care programs and services to residents.
5440	(21) "Specialty hospital" means a facility which provides specialized diagnostic,
5441	therapeutic, or rehabilitative services in the recognized specialty or specialties for which the
5442	hospital is licensed.
5443	(22) "Substantial compliance" means in a department survey of a licensee, the
5444	department determines there is an absence of deficiencies which would harm the physical
5445	health, mental health, safety, or welfare of patients or residents of a licensee.
5446	(23) "Type I abortion clinic" means a facility, including a physician's office, but not
5447	including a general acute or specialty hospital, that:
5448	(a) performs abortions, as defined in Section 76-7-301, during the first trimester of
5449	pregnancy; and
5450	(b) does not perform abortions, as defined in Section 76-7-301, after the first trimester
5451	of pregnancy.
5452	(24) "Type II abortion clinic" means a facility, including a physician's office, but not
5453	including a general acute or specialty hospital, that:
5454	(a) performs abortions, as defined in Section 76-7-301, after the first trimester of
5455	pregnancy; or
5456	(b) performs abortions, as defined in Section 76-7-301, during the first trimester of
5457	pregnancy and after the first trimester of pregnancy.
5458	
5459	[26-21-6.] <u>26B-2-202.</u> Duties of department.
5460	(1) The department shall:
5461	(a) enforce rules established pursuant to this [chapter] part;
5462	(b) authorize an agent of the department to conduct inspections of health care
5463	facilities pursuant to this [chapter] part;
5464	(c) collect information authorized by the committee that may be necessary to ensure
5465	that adequate health care facilities are available to the public;
5466	(d) collect and credit fees for licenses as free revenue;
5467	(e) collect and credit fees for conducting plan reviews as dedicated credits;
5468	(f) (i) collect and credit fees for conducting clearance under [Chapter 21, Part 2,

(ii) beginning July 1, 2012:

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Clearance for Direct Patient Access] Part 3, XXXXX ; and

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5471	(A) up to \$105,000 of the fees collected under Subsection (1)(f)(i) are dedicated
5472	credits; and
5473	(B) the fees collected for background checks under Subsection [26-21-204]
5474	26B-2-XXX (6) and Section 26-21-205 shall be transferred to the Department of Public
5475	Safety to reimburse the Department of Public Safety for its costs in conducting the federal
5476	background checks;
5477	(g) designate an executive secretary from within the department to assist the
5478	committee in carrying out its powers and responsibilities;
5479	(h) establish reasonable standards for criminal background checks by public and
5480	private entities;
5481	(i) recognize those public and private entities that meet the standards established
5482	pursuant to Subsection (1)(h); and
5483	(j) provide necessary administrative and staff support to the committee.
5484	(2) The department may:
5485	(a) exercise all incidental powers necessary to carry out the purposes of this [chapter]
5486	<u>part</u> ;
5487	(b) review architectural plans and specifications of proposed health care facilities or
5488	renovations of health care facilities to ensure that the plans and specifications conform to
5489	rules established by the committee; and
5490	(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
5491	make rules as necessary to implement the provisions of this [chapter] part.
5492	
5493	[26-21-2.1.] <u>26B-2-203.</u> Services <u>required General acute hospitals</u>
5494	Specialty hospitals Home health agencies Hospice programs.
5495	(1) General acute hospitals and specialty hospitals shall remain open and be
5496	continuously ready to receive patients 24 hours of every day in a year and have an attending
5497	medical staff consisting of one or more physicians licensed to practice medicine and surgery
5498	under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah

5500 (2) A specialty hospital shall provide on-site all basic services required of a general acute hospital that are needed for the diagnosis, therapy, or rehabilitation offered to or required by patients admitted to or cared for in the facility.

Osteopathic Medical Practice Act.

- 5503 (3) (a) A home health agency shall provide at least licensed nursing services or 5504 therapeutic services directly through the agency employees.
 - (b) A home health agency may provide additional services itself or under arrangements with another agency, organization, facility, or individual.
- 5507 (4) Beginning January 1, 2023, a hospice program shall provide at least one qualified medical provider, as that term is defined in Section [26-61a-102] <u>26B-X-XXX</u>, for the treatment of hospice patients.

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[26-21-6.5.] 26B-2-204. Licensing of an abortion clinic -- Rulemaking authority

5512 -- Fee.

- 5513 (1) A type I abortion clinic may not operate in the state without a license issued by the department to operate a type I abortion clinic.
 - (2) A type II abortion clinic may not operate in the state without a license issued by the department to operate a type II abortion clinic.
 - (3) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:
 - (a) a type I abortion clinic; and
 - (b) a type II abortion clinic.
- 5521 (4) To receive and maintain a license described in this section, an abortion clinic shall:
 - (a) apply for a license on a form prescribed by the department;
- (b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements established under Subsection (3) that relate to the type of abortion clinic licensed;
 - (c) comply with the recordkeeping and reporting requirements of Section 76-7-313;
 - (d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;
- (e) pay the annual licensing fee; and
- (f) cooperate with inspections conducted by the department.
- 5531 (5) The department shall, at least twice per year, inspect each abortion clinic in the 5532 state to ensure that the abortion clinic is complying with all statutory and licensing 5533 requirements relating to the abortion clinic. At least one of the inspections shall be made 5534 without providing notice to the abortion clinic.

5535	(6) The department shall charge an annual license fee, set by the department in
5536	accordance with the procedures described in Section 63J-1-504, to an abortion clinic in an
5537	amount that will pay for the cost of the licensing requirements described in this section and
5538	the cost of inspecting abortion clinics.

(7) The department shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

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- [26-21-7.] <u>26B-2-205.</u> Exempt facilities.
- This [chapter] part does not apply to:
- 5545 (1) a dispensary or first aid facility maintained by any commercial or industrial plant, 5546 educational institution, or convent;
 - (2) a health care facility owned or operated by an agency of the United States;
 - (3) the office of a physician, physician assistant, or dentist whether it is an individual or group practice, except that it does apply to an abortion clinic;
 - (4) a health care facility established or operated by any recognized church or denomination for the practice of religious tenets administered by mental or spiritual means without the use of drugs, whether gratuitously or for compensation, if it complies with statutes and rules on environmental protection and life safety;
 - (5) any health care facility owned or operated by the Department of Corrections, created in Section 64-13-2; and
 - (6) a residential facility providing 24-hour care:
 - (a) that does not employ direct care staff;
 - (b) in which the residents of the facility contract with a licensed hospice agency to receive end-of-life medical care; and
- (c) that meets other requirements for an exemption as designated by administrative rule.

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- [26-21-8.] <u>26B-2-206.</u> License required -- Not assignable or transferable -- Posting -- Expiration and renewal -- Time for compliance by operating facilities.
- 5565 (1) (a) A person or governmental unit acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a health care facility in this

state without receiving a license from the department as provided by this [chapter] part and 5567 5568 the rules adopted pursuant to this [chapter] part.

- 5569 (b) This Subsection (1) does not apply to facilities that are exempt under Section [26-21-7] 26B-2-205. 5570
 - (2) A license issued under this [chapter] part is not assignable or transferable.
 - (3) The current license shall at all times be posted in each health care facility in a place readily visible and accessible to the public.
 - (4) (a) The department may issue a license for a period of time not to exceed 12 months from the date of issuance for an abortion clinic and not to exceed 24 months from the date of issuance for other health care facilities that meet the provisions of this chapter and department rules adopted pursuant to this [chapter] part.
 - (b) Each license expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the department.
 - (c) The license shall be renewed upon completion of the application requirements. unless the department finds the health care facility has not complied with the provisions of this [chapter] part or the rules adopted pursuant to this [chapter] part.
 - (5) A license may be issued under this section only for the operation of a specific facility at a specific site by a specific person.
 - (6) Any health care facility in operation at the time of adoption of any applicable rules as provided under this [chapter] part shall be given a reasonable time for compliance as determined by the committee.

[26-21-9.] 26B-2-207. Application for license -- Information required -- Public records.

- (1) An application for license shall be made to the department in a form prescribed by the department. The application and other documentation requested by the department as part of the application process shall require such information as the committee determines necessary to ensure compliance with established rules.
- (2) Information received by the department in reports and inspections shall be public records, except the information may not be disclosed if it directly or indirectly identifies any individual other than the owner or operator of a health facility (unless disclosure is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of personal

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5599	privacy.
5600	(3) Information received by the department from a health care facility, pertaining to
5601	that facility's accreditation by a voluntary accrediting organization, shall be private data
5602	except for a summary prepared by the department related to licensure standards.
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5604	[26-21-11.] <u>26B-2-208.</u> Violations Denial or revocation of license
5605	Restricting or prohibiting new admissions Monitor.
5606	If the department finds a violation of this [chapter] part or any rules adopted pursuant
5607	to this [chapter] part the department may take one or more of the following actions:
5608	(1) serve a written statement of violation requiring corrective action, which shall
5609	include time frames for correction of all violations;
5610	(2) deny or revoke a license if it finds:
5611	(a) there has been a failure to comply with the rules established pursuant to this
5612	[chapter] part;
5613	(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
5614	(c) conduct adverse to the public health, morals, welfare, and safety of the people of
5615	the state;
5616	(3) restrict or prohibit new admissions to a health care facility or revoke the license of
5617	a health care facility for:
5618	(a) violation of any rule adopted under this [chapter] part; or
5619	(b) permitting, aiding, or abetting the commission of any illegal act in the health care
5620	facility;
5621	(4) place a department representative as a monitor in the facility until corrective action
5622	is completed;
5623	(5) assess to the facility the cost incurred by the department in placing a monitor;
5624	(6) assess an administrative penalty as allowed by Subsection [26-23-6] <u>26B-X-XXX</u>
5625	(1)(a); or
5626	(7) issue a cease and desist order to the facility.
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5628	[26-21-11.1.] <u>26B-2-209.</u> Failure to follow certain health care claims practices -
5629	Penalties.
5630	(1) The department may assess a fine of up to \$500 per violation against a health

care facility that violates Section 31A-26-313. 5631

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- 5632 (2) The department shall waive the fine described in Subsection (1) if:
- (a) the health care facility demonstrates to the department that the health care facility 5633 5634 mitigated and reversed any damage to the insured caused by the health care facility or third 5635 party's violation; or
 - (b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care facility or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.

5641 [26-21-12.] 26B-2-210. Issuance of new license after revocation -- Restoration.

- (1) If a license is revoked, the department may issue a new license only after it determines by inspection that the facility has corrected the conditions that were the basis of revocation and that the facility complies with all provisions of this [chapter] part and applicable rules.
- (2) If the department does not renew a license because of noncompliance with the provisions of this [chapter] part or the rules adopted under this [chapter] part, the department may issue a new license only after the facility complies with all renewal requirements and the department determines that the interests of the public will not be ieopardized.

[26-21-13.] 26B-2-211. License issued to facility in compliance or substantial compliance with [chapter] part and rules.

- (1) The department shall issue a standard license for a health care facility which is found to be in compliance with the provisions of this [chapter] part and with all applicable rules adopted by the committee.
- (2) The department may issue a provisional or conditional license for a health care facility which is in substantial compliance if the interests of the public will not be jeopardized.

[26-21-13.5.] 26B-2-212. Intermediate care facilities for people with an intellectual disability -- Licensing.

(1) (a) It is the Legislature's intent that a person with a developmental disability be

provided with an environment and surrounding that, as closely as possible, resembles small community-based, homelike settings, to allow those persons to have the opportunity, to the maximum extent feasible, to exercise their full rights and responsibilities as citizens.

- (b) It is the Legislature's purpose, in enacting this section, to provide assistance and opportunities to enable a person with a developmental disability to achieve the person's maximum potential through increased independence, productivity, and integration into the community.
- (2) After July 1, 1990, the department may only license intermediate care beds for people with an intellectual disability in small health care facilities.
- (3) The department may define by rule "small health care facility" for purposes of licensure under this section and adopt rules necessary to carry out the requirements and purposes of this section.
- (4) This section does not apply to the renewal of a license or the licensure to a new owner of any facility that was licensed on or before July 1, 1990, and that licensure has been maintained without interruption.

[26-21-13.6.] <u>26B-2-213.</u> Rural hospital -- Optional service designation.

- (1) The Legislature finds that:
 - (a) the rural citizens of this state need access to hospitals and primary care clinics;
- (b) financial stability of remote-rural hospitals and their integration into remote-rural delivery networks is critical to ensure the continued viability of remote-rural health care; and
- (c) administrative simplicity is essential for providing large benefits to small-scale remote-rural providers who have limited time and resources.
- (2) After July 1, 1995, the department may grant variances to remote-rural acute care hospitals for specific services currently required for licensure under general hospital standards established by department rule.
- (3) For purposes of this section, "remote-rural hospitals" are hospitals that are in a county with less than 20 people per square mile.

[26-21-14.] **26B-2-214**. Closing facility -- Appeal.

(1) If the department finds a condition in any licensed health care facility that is a clear hazard to the public health, the department may immediately order that facility closed

5695	and may prevent the entrance of any resident or patient onto the premises of that facility unti
5696	the condition is eliminated.

(2) Parties aggrieved by the actions of the department under this section may obtain an adjudicative proceeding and judicial review.

[26-21-15.] <u>26B-2-215.</u> Action by department for injunction.

Notwithstanding the existence of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of a health care facility which is in violation of this [chapter] part or rules adopted by the committee.

[26-21-16.] <u>26B-2-216.</u> Operating facility in violation of [chapter] <u>part</u> a misdemeanor.

In addition to the penalties in Section [26-23-6] <u>26B-2-202</u>, any person owning, establishing, conducting, maintaining, managing, or operating a health care facility in violation of this [chapter] part is guilty of a class A misdemeanor.

[26-21-17.] <u>26B-2-217.</u> Department agency of state to contract for certification of facilities under Social Security Act.

The department is the sole agency of the state authorized to enter into a contract with the United States government for the certification of health care facilities under Title XVIII and Title XIX of the Social Security Act, and any amendments thereto.

[26-21-19.] <u>26B-2-218.</u> Life and Health Insurance Guaranty Association Act not amended.

The provisions of this [chapter] part do not amend, affect, or alter the provisions of Title 31A, Chapter 28, Guaranty Associations.

[26-21-20.] <u>26B-2-219.</u> Requirement for hospitals to provide statements of itemized charges to patients.

5727	(1) [For purposes of] As used in this section, "hospital" includes:
5728	(a) an ambulatory surgical facility;
5729	(b) a general acute hospital; and
5730	(c) a specialty hospital.
5731	(2) A hospital shall provide a statement of itemized charges to any patient receiving
5732	medical care or other services from that hospital.
5733	(3) (a) The statement shall be provided to the patient or the patient's personal
5734	representative or agent at the hospital's expense, personally, by mail, or by verifiable
5735	electronic delivery after the hospital receives an explanation of benefits from a third party
5736	payer which indicates the patient's remaining responsibility for the hospital charges.
5737	(b) If the statement is not provided to a third party, it shall be provided to the patient
5738	as soon as possible and practicable.
5739	(4) The statement required by this section:
5740	(a) shall itemize each of the charges actually provided by the hospital to the patient;
5741	(b) (i) shall include the words in bold "THIS IS THE BALANCE DUE AFTER
5742	PAYMENT FROM YOUR HEALTH INSURER"; or
5743	(ii) shall include other appropriate language if the statement is sent to the patient
5744	under Subsection (3)(b); and
5745	(c) may not include charges of physicians who bill separately.
5746	(5) The requirements of this section do not apply to patients who receive services
5747	from a hospital under Title XIX of the Social Security Act.
5748	(6) Nothing in this section prohibits a hospital from sending an itemized billing
5749	statement to a patient before the hospital has received an explanation of benefits from an
5750	insurer. If a hospital provides a statement of itemized charges to a patient prior to receiving
5751	the explanation of benefits from an insurer, the itemized statement shall be marked in bold:
5752	"DUPLICATE: DO NOT PAY" or other appropriate language.
5753	
5754	[26-21-21.] <u>26B-2-220.</u> Authentication of medical records.
5755	Any entry in a medical record compiled or maintained by a health care facility may be
5756	authenticated by identifying the author of the entry by:
5757	(1) a signature including first initial, last name, and discipline; or

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(2) the use of a computer identification process unique to the author that definitively

5759	identifies the author.
5760	
5761	[26-21-22.] <u>26B-2-221.</u> Reporting of disciplinary information Immunity from
5762	liability.
5763	A health care facility licensed under this [chapter] part which reports disciplinary
5764	information on a licensed nurse to the Division of Professional Licensing within the
5765	Department of Commerce as required by Section 58-31b-702 is entitled to the immunity from
5766	liability provided by that section.
5767	
5768	[26-21-23.] <u>26B-2-222.</u> Licensing of a new nursing care facility Approval for a
5769	licensed bed in an existing nursing care facility Fine for excess Medicare inpatient
5770	revenue.
5771	(1) Notwithstanding Section [26-21-2] <u>26B-2-201</u> , as used in this section:
5772	(a) "Medicaid" means the Medicaid program, as that term is defined in Section
5773	26-18-2.
5774	(b) "Medicaid certification" means the same as that term is defined in Section
5775	26-18-501.
5776	(c) "Nursing care facility" and "small health care facility":
5777	(i) mean the following facilities licensed by the department under this [chapter] part:
5778	(A) a skilled nursing facility;
5779	(B) an intermediate care facility; or
5780	(C) a small health care facility with four to 16 beds functioning as a skilled nursing
5781	facility; and
5782	(ii) do not mean:
5783	(A) an intermediate care facility for the intellectually disabled;
5784	(B) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);
5785	(C) a small health care facility that is hospital based; or
5786	(D) a small health care facility other than a skilled nursing care facility with no more
5787	than 16 beds.
5788	(d) "Rural county" means the same as that term is defined in Section [26-18-501]
5789	26B-X-XXX.
5790	(2) Except as provided in Subsection (6) and Section [26-21-28] <u>26B-X-XXX</u> , a new

5791 nursing care facility shall be approved for a health facility license only if:

- 5792 (a) under the provisions of Section [26-18-503] 26B-X-XXX the facility's nursing care facility program has received Medicaid certification or will receive Medicaid certification for 5793 5794 each bed in the facility:
- 5795 (b) the facility's nursing care facility program has received or will receive approval for Medicaid certification under Subsection [26-18-503] 26B-X-XXX (5), if the facility is located 5796 5797 in a rural county; or
- 5798 (c) (i) the applicant submits to the department the information described in Subsection 5799 (3); and
 - (ii) based on that information, and in accordance with Subsection (4), the department determines that approval of the license best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility.
 - (3) A new nursing care facility seeking licensure under Subsection (2) shall submit to the department the following information:
 - (a) proof of the following as reasonable evidence that bed capacity provided by nursing care facilities within the county or group of counties that would be impacted by the facility is insufficient:
 - (i) nursing care facility occupancy within the county or group of counties:
- 5809 (A) has been at least 75% during each of the past two years for all existing facilities 5810 combined; and
 - (B) is projected to be at least 75% for all nursing care facilities combined that have been approved for licensure but are not yet operational;
 - (ii) there is no other nursing care facility within a 35-mile radius of the new nursing care facility seeking licensure under Subsection (2); and
 - (b) a feasibility study that:

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- 5816 (i) shows the facility's annual Medicare inpatient revenue, including Medicare 5817 Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of 5818 the first three years of operation;
- 5819 (ii) shows the facility will be financially viable if the annual occupancy rate is at least 88%; 5820
- 5821 (iii) shows the facility will be able to achieve financial viability;
- 5822 (iv) shows the facility will not:

- 5823 (A) have an adverse impact on existing or proposed nursing care facilities within the county or group of counties that would be impacted by the facility; or
- 5825 (B) be within a three-mile radius of an existing nursing care facility or a new nursing care facility that has been approved for licensure but is not yet operational;
 - (v) is based on reasonable and verifiable demographic and economic assumptions;
 - (vi) is based on data consistent with department or other publicly available data; and
- (vii) is based on existing sources of revenue.

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- (4) When determining under Subsection (2)(c) whether approval of a license for a new nursing care facility best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility, the department shall consider:
- (a) whether the county or group of counties that would be impacted by the facility is underserved by specialized or unique services that would be provided by the facility; and
- (b) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of current and future nursing care facility patients within the impacted area.
- (5) The department may approve the addition of a licensed bed in an existing nursing care facility only if:
- (a) each time the facility seeks approval for the addition of a licensed bed, the facility satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3), and (4); or
- (b) the bed has been approved for Medicaid certification under Section [26-18-503] <u>26B-X-XXX</u> or [26-18-505] <u>26B-X-XXX</u>.
 - (6) Subsection (2) does not apply to a nursing care facility that:
- 5846 (a) has, by the effective date of this act, submitted to the department schematic 5847 drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of 5848 that site;
- 5849 (b) before July 1, 2016:
 - (i) filed an application with the department for licensure under this section and paid all related fees due to the department; and
- 5852 (ii) submitted to the department architectural plans and specifications, as defined by the department by administrative rule, for the facility;
 - (c) applies for a license within three years of closing for renovation;

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5855	(d) replaces a nursing care facility that:
5856	(i) closed within the past three years; or
5857	(ii) is located within five miles of the facility;
5858	(e) is undergoing a change of ownership, even if a government entity designates the
5859	facility as a new nursing care facility; or
5860	(f) is a state-owned veterans home, regardless of who operates the home.
5861	(7) (a) For each year the annual Medicare inpatient revenue, including Medicare
5862	Advantage revenue, of a nursing care facility approved for a health facility license under
5863	Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be
5864	subject to a fine of \$50,000, payable to the department.
5865	(b) A nursing care facility approved for a health facility license under Subsection (2)(c)
5866	shall submit to the department the information necessary for the department to annually
5867	determine whether the facility is subject to the fine in Subsection (7)(a).
5868	(c) The department:
5869	(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
5870	Rulemaking Act, specifying the information a nursing care facility shall submit to the
5871	department under Subsection (7)(b);
5872	(ii) shall annually determine whether a facility is subject to the fine in Subsection
5873	(7)(a);
5874	(iii) may take one or more of the actions in Section [26-21-11] <u>26B-2-208</u> or
5875	[26-23-6] 26B-2-202 against a facility for nonpayment of a fine due under Subsection (7)(a);
5876	and
5877	(iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing
5878	Care Facilities Provider Assessment Fund, created by Section 26-35a-106.
5879	
5880	[26-21-24.] <u>26B-2-223.</u> Prohibition against bed banking by nursing care
5881	facilities for Medicaid reimbursement.
5882	(1) [For purposes of] As used in this section:
5883	(a) "[bed] Bed banking" means the designation of a nursing care facility bed as not
5884	part of the facility's operational bed capacity; and
5885	(b) "[nursing] Nursing care facility" [is as defined in Subsection 26-21-23(1)] means

the same as that term is defined in Section 26B-2-222 .

5887 (2) Beginning July 1, 2008, the department shall, for purposes of Medicaid 5888 reimbursement under [Chapter 18, Part 1] Chapter X, Part X, Medical Assistance Programs, prohibit the banking of nursing care facility beds. 5889 5890 5891 [26-21-25.] 26B-2-224. Patient identity protection. 5892 (1) As used in this section: 5893 (a) "EMTALA" means the federal Emergency Medical Treatment and Active Labor 5894 Act. 5895 (b) "Health professional office" means: 5896 (i) a physician's office; or 5897 (ii) a dental office. 5898 (c) "Medical facility" means: (i) a general acute hospital; 5899 5900 (ii) a specialty hospital; 5901 (iii) a home health agency; 5902 (iv) a hospice: (v) a nursing care facility; 5903 5904 (vi) a residential-assisted living facility; 5905 (vii) a birthing center; (viii) an ambulatory surgical facility: 5906 5907 (ix) a small health care facility; 5908 (x) an abortion clinic; (xi) a facility owned or operated by a health maintenance organization; 5909 5910 (xii) an end stage renal disease facility; 5911 (xiii) a health care clinic; or 5912 (xiv) any other health care facility that the committee designates by rule. 5913 (2) (a) In order to discourage identity theft and health insurance fraud, and to reduce 5914 the risk of medical errors caused by incorrect medical records, a medical facility or a health 5915 professional office shall request identification from an individual prior to providing in-patient 5916 or out-patient services to the individual.

(b) If the individual who will receive services from the medical facility or a health

professional office lacks the legal capacity to consent to treatment, the medical facility or a

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5919	health professional office shall request identification:
5920	(i) for the individual who lacks the legal capacity to consent to treatment; and
5921	(ii) from the individual who consents to treatment on behalf of the individual described
5922	in Subsection (2)(b)(i).
5923	(3) A medical facility or a health professional office:
5924	(a) that is subject to EMTALA:
5925	(i) may not refuse services to an individual on the basis that the individual did not
5926	provide identification when requested; and
5927	(ii) shall post notice in its emergency department that informs a patient of the patient's
5928	right to treatment for an emergency medical condition under EMTALA;
5929	(b) may not be penalized for failing to ask for identification;
5930	(c) is not subject to a private right of action for failing to ask for identification; and
5931	(d) may document or confirm patient identity by:
5932	(i) photograph;
5933	(ii) fingerprinting;
5934	(iii) palm scan; or
5935	(iv) other reasonable means.
5936	(4) The identification described in this section:
5937	(a) is intended to be used for medical records purposes only; and
5938	(b) shall be kept in accordance with the requirements of the Health Insurance
5939	Portability and Accountability Act of 1996.
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5941	[26-21-26.] <u>26B-2-225.</u> General acute hospital to report prescribed controlled
5942	substance poisoning or overdose.
5943	(1) If a person who is 12 years old or older is admitted to a general acute hospital for
5944	poisoning or overdose involving a prescribed controlled substance, the general acute hospital
5945	shall, within three business days after the day on which the person is admitted, send a
5946	written report to the Division of Professional Licensing, created in Section 58-1-103, that
5947	includes:
5948	(a) the patient's name and date of birth;
5949	(b) each drug or other substance found in the person's system that may have
5950	contributed to the poisoning or overdose if known:

5951	(c) the name of each person who the general acute hospital has reason to believe
5952	may have prescribed a controlled substance described in Subsection (1)(b) to the person, if
5953	known; and
5954	(d) the name of the hospital and the date of admission.
5955	(2) Nothing in this section may be construed as creating a new cause of action.
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5957	[26-21-27.] <u>26B-2-226.</u> Information regarding certain health care facility
5958	charges.
5959	A health care facility licensed under this [chapter] part shall, when requested by a
5960	consumer:
5961	(1) make a list of prices charged by the facility available for the consumer that
5962	includes the facility's:
5963	(a) in-patient procedures;
5964	(b) out-patient procedures;
5965	(c) the 50 most commonly prescribed drugs in the facility;
5966	(d) imaging services; and
5967	(e) implants; and
5968	(2) provide the consumer with information regarding any discounts the facility
5969	provides for:
5970	(a) charges for services not covered by insurance; or
5971	(b) prompt payment of billed charges.
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5973	[26-21-28.] <u>26B-2-227.</u> Pilot program for managed care model with a small
5974	health care facility operating as a skilled nursing facility.
5975	(1) Notwithstanding the requirement for Medicaid certification under [Chapter 18, Part
5976	5, Long Term Care Facility - Medicaid Certification] Chapter X, Part X, XXXX, and Section
5977	[26-21-23] <u>26B-2-222</u> , a small health care facility with four to 16 beds, functioning as a
5978	skilled nursing facility, may be approved for licensing by the department as a pilot program in
5979	accordance with this section, and without obtaining Medicaid certification for the beds in the
5980	facility.
5981	(2) (a) The department shall establish one pilot program with a facility that meets the

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qualifications under Subsection (3).

- 5983 (b) The purpose of the pilot program described in Subsection (2)(a) is to study the impact of an integrated managed care model on cost and quality of care involving pre- and post-surgical services offered by a small health care facility operating as a skilled nursing facility.
- 5987 (3) A small health care facility with four to 16 beds that functions as a skilled nursing facility may apply for a license under the pilot program if the facility will:
- 5989 (a) be located in:
- (i) a county of the second class that has at least 1,800 square miles within the county; and
- 5992 (ii) a city of the fifth class; and
- (b) limit a patient's stay in the facility to no more than 10 days.

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- [26-21-29.] <u>26B-2-228.</u> Birthing centers -- Regulatory restrictions.
- 5996 (1) [For purposes of] As used in this section:
- 5997 (a) "Alongside midwifery unit" means a birthing center that meets the requirements 5998 described in Subsection (7).
- 5999 (b) "Certified nurse midwife" means an individual who is licensed under Title 58, 6000 Chapter 44a, Nurse Midwife Practice Act.
- 6001 (c) "Direct-entry midwife" means an individual who is licensed under Title 58, Chapter 77, Direct-Entry Midwife Act.
- 6003 (d) "Licensed maternity care practitioner" includes:
- 6004 (i) a physician;
- 6005 (ii) a certified nurse midwife;
 - (iii) a direct entry midwife;
- 6007 (iv) a naturopathic physician; and
- 6008 (v) other individuals who are licensed under Title 58, Occupations and Professions and whose scope of practice includes midwifery or obstetric care.
- 6010 (e) "Naturopathic physician" means an individual who is licensed under Title 58, 6011 Chapter 71, Naturopathic Physician Practice Act.
- 6012 (f) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah 6013 Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
 - (2) The Health Facility Committee and the department may not require a birthing

6015 center or a licensed maternity care practitioner who practices at a birthing center to: 6016 (a) maintain admitting privileges at a general acute hospital; 6017 (b) maintain a written transfer agreement with one or more general acute hospitals; 6018 (c) maintain a collaborative practice agreement with a physician; or 6019 (d) have a physician or certified nurse midwife present at each birth when another 6020 licensed maternity care practitioner is present at the birth and remains until the maternal 6021 patient and newborn are stable postpartum. 6022 (3) The Health Facility Committee and the department shall: 6023 (a) permit all types of licensed maternity care practitioners to practice in a birthing 6024 center; and (b) except as provided in Subsection (2)(b), require a birthing center to have a written 6025 6026 plan for the transfer of a patient to a hospital in accordance with Subsection (4). 6027 (4) A transfer plan under Subsection (3)(b) shall: 6028 (a) be signed by the patient; and 6029 (b) indicate that the plan is not an agreement with a hospital. 6030 (5) If a birthing center transfers a patient to a licensed maternity care practitioner or 6031 facility, the responsibility of the licensed maternity care practitioner or facility, for the patient: 6032 (a) does not begin until the patient is physically within the care of the licensed 6033 maternity care practitioner or facility; 6034 (b) is limited to the examination and care provided after the patient is transferred to 6035 the licensed maternity care practitioner or facility; and 6036 (c) does not include responsibility or accountability for the patient's decision to pursue 6037 an out-of-hospital birth and the services of a birthing center. (6) (a) Except as provided in Subsection (6)(c), a licensed maternity care practitioner 6038 6039 who is not practicing at a birthing center may, upon receiving a briefing from a member of a 6040 birthing center's clinical staff, issue a medical order for the birthing center's patient without 6041 assuming liability for the care of the patient for whom the order was issued. (b) Regardless of the advice given or order issued under Subsection (6)(a), the 6042 6043 responsibility and liability for caring for the patient is that of the birthing center and the

(c) The licensed maternity care practitioner giving the order under Subsection (6)(a) is responsible and liable only for the appropriateness of the order, based on the briefing

birthing center's clinical staff.

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WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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6047	received under Subsection (6)(a).
6048	(7) (a) A birthing center that is not freestanding may be licensed as an alongside
6049	midwifery unit if the birthing center:
6050	(i) is accredited by the Commission on Accreditation of Birth Centers;
6051	(ii) is connected to a hospital facility, either through a bridge, ramp, or adjacent to the
6052	labor and delivery unit within the hospital with care provided with the midwifery model of care,
6053	where maternal patients are received and care provided during labor, delivery, and
6054	immediately after delivery; and
6055	(iii) is supervised by a clinical director who is licensed as a physician as defined in
6056	Section 58-67-102 or a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife
6057	Practice Act.
6058	(b) An alongside midwifery unit shall have a transfer agreement in place with the
6059	adjoining hospital:
6060	(i) to transfer a patient to the adjacent hospital's labor and delivery unit if a higher
6061	level of care is needed; and
6062	(ii) for services that are provided by the adjacent hospital's staff in collaboration with
6063	the alongside midwifery unit staff.
6064	(c) An alongside midwifery unit may:
6065	(i) contract with staff from the adjoining hospital to assist with newborn care or
6066	resuscitation of a patient in an emergency; and
6067	(ii) integrate the alongside midwifery unit's medical records with the medical record
6068	system utilized by the adjoining hospital.
6069	(d) Notwithstanding Title 58, Chapter 77, Direct-Entry Midwife Act, licensure as a
6070	direct-entry midwife under Section 58-77-301 is not sufficient to practice as a licensed
6071	maternity care practitioner in an alongside midwifery unit.
6072	(8) The department shall hold a public hearing under Subsection 63G-3-302(2)(a) for
6073	a proposed administrative rule, and amendment to a rule, or repeal of a rule, that relates to
6074	birthing centers.
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6076	[26-21-30.] <u>26B-2-229.</u> Disposal of controlled substances at nursing care
6077	facilities.

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(1) As used in this section:

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- 6079 (a) "Controlled substance" means the same as that term is defined in Section 6080 58-37-2.
- (b) (i) "Irretrievable" means a state in which the physical or chemical condition of a controlled substance is permanently altered through irreversible means so that the controlled substance is unavailable and unusable for all practical purposes.
 - (ii) A controlled substance is irretrievable if the controlled substance is non-retrievable as that term is defined in 21 C.F.R. Sec. 1300.05.
 - (2) A nursing care facility that is in lawful possession of a controlled substance in the nursing care facility's inventory that desires to dispose of the controlled substance shall dispose of the controlled substance in a manner that:
 - (a) renders the controlled substance irretrievable; and
 - (b) complies with all applicable federal and state requirements for the disposal of a controlled substance.
 - (3) A nursing care facility shall:

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- (a) develop a written plan for the disposal of a controlled substance in accordance with this section; and
- (b) make the plan described in Subsection (3)(a) available to the department and the committee for inspection.

[26-21-31.] <u>26B-2-230.</u> Prohibition on certain age-based physician testing.

A health care facility may not require for purposes of employment, privileges, or reimbursement, that a physician, as defined in Section 58-67-102, take a cognitive test when the physician reaches a specified age, unless the test reflects the standards described in Subsections 58-67-302(5)(b)(i) through (x).

[26-21-32.] <u>26B-2-231.</u> Notification of air ambulance policies and charges.

- (1) For any patient who is in need of air medical transport provider services, a health care facility shall:
- (a) provide the patient or the patient's representative with the information described in Subsection [26-8a-107] <u>26B-X-XXX</u> (7)(a) before contacting an air medical transport provider; and
 - (b) if multiple air medical transport providers are capable of providing the patient with

- services, provide the patient or the patient's representative with an opportunity to choose the air medical transport provider.
 - (2) Subsection (1) does not apply if the patient:
- 6114 (a) is unconscious and the patient's representative is not physically present with the 6115 patient; or
- (b) is unable, due to a medical condition, to make an informed decision about the
 choice of an air medical transport provider, and the patient's representative is not physically
 present with the patient.

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- [26-21-33.] <u>26B-2-232.</u> Treatment of aborted remains.
- (1) As used in this section, "aborted fetus" means a product of human conception,
 regardless of gestational age, that has died from an abortion as that term is defined in
 Section 76-7-301.
- 6124 (2) (a) A health care facility having possession of an aborted fetus shall provide for 6125 the final disposition of the aborted fetus through:
 - (i) cremation as that term is defined in Section 58-9-102; or
- 6127 (ii) interment.
- (b) A health care facility may not conduct the final disposition of an aborted fetus less than 72 hours after an abortion is performed unless:
 - (i) the pregnant woman authorizes the health care facility, in writing, to conduct the final disposition of the aborted fetus less than 72 hours after the abortion is performed; or
 - (ii) immediate disposition is required under state or federal law.
- 6133 (c) A health care facility may serve as an authorizing agent as defined in Section 6134 58-9-102 with respect to the final disposition of an aborted fetus if:
- 6135 (i) the pregnant woman provides written authorization for the health care facility to act 6136 as the authorizing agent; or
 - (ii) (A) more than 72 hours have passed since the abortion was performed; and
- 6138 (B) the pregnant woman did not exercise her right to control the final disposition of the 6139 aborted fetus under Subsection (4)(a).
- 6140 (d) Within 120 business days after the day on which an abortion is performed, a 6141 health care facility possessing an aborted fetus shall:
- (i) conduct the final disposition of the aborted fetus in accordance with this section; or

- (ii) ensure that the aborted fetus is preserved until final disposition. 6143 6144 (e) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law. 6145 6146 (3) Before performing an abortion, a health care facility shall: 6147 (a) provide the pregnant woman with the information described in Subsection 76-7-305.5(2)(w) through: 6148 6149 (i) a form approved by the department; (ii) an in-person consultation with a physician; or 6150 6151 (iii) an in-person consultation with a mental health therapist as defined in Section 6152 58-60-102; and (b) if the pregnant woman makes a decision under Subsection (4)(b), document the 6153 6154 pregnant woman's decision under Subsection (4)(b) in the pregnant woman's medical record. 6155 (4) A pregnant woman who has an abortion: 6156 (a) except as provided in Subsection (6), has the right to control the final disposition 6157 of the aborted fetus; 6158 (b) if the pregnant woman has a preference for disposition of the aborted fetus, shall inform the health care facility of the pregnant woman's decision for final disposition of the 6159 6160 aborted fetus: 6161 (c) is responsible for the costs related to the final disposition of the aborted fetus at 6162 the chosen location if the pregnant woman chooses a method or location for the final 6163 disposition of the aborted fetus that is different from the method or location that is usual and 6164 customary for the health care facility; and 6165 (d) for a medication-induced abortion, shall be permitted to return the aborted fetus to the health care facility in a sealed container for disposition by the health care facility in 6166
 - "You have the right to decide what you would like to do with the aborted fetus. You may decide for the provider to be responsible for disposition of the fetus. If you are having a medication-induced abortion, you also have the right to bring the aborted fetus back to this provider for disposition after the fetus is expelled. The provider may dispose of the aborted fetus by burial or cremation. You can ask the provider if you want to know the specific method for disposition."

(5) The form described in Subsection (3)(a)(i) shall include the following information:

accordance with this section.

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- 6175 (6) If the pregnant woman is a minor, the health care facility shall obtain parental consent for the disposition of the aborted fetus unless the minor is granted a court order under Subsection 76-7-304(1)(b).
- 6178 (7) (a) A health care facility may not include fetal remains with other biological, 6179 infectious, or pathological waste.
 - (b) Fetal tissue that is sent for permanently fixed pathology or used for genetic study is not subject to the requirements of this section.
 - (c) (i) A health care facility is responsible for maintaining a record to demonstrate to the department that the health care facility has complied with the provisions of this section.
 - (ii) The records described in Subsection (7)(c)(i) shall be:
 - (A) maintained for at least two years; and
 - (B) made available to the department for inspection upon request by the department.

6188 [26-21-34.] <u>26B-2-233.</u> Treatment of miscarried remains.

- (1) As used in this section, "miscarried fetus" means a product of human conception, regardless of gestational age, that has died from a spontaneous or accidental death before expulsion or extraction from the mother, regardless of the duration of the pregnancy.
- (2) (a) A health care facility having possession of a miscarried fetus shall provide for the final disposition of the miscarried fetus through:
 - (i) cremation as that term is defined in Section 58-9-102; or
- 6195 (ii) interment.

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- (b) A health care facility may not conduct the final disposition of a miscarried fetus
 less than 72 hours after a woman has her miscarried fetus expelled or extracted in the health
 care facility unless:
 - (i) the parent authorizes the health care facility, in writing, to conduct the final disposition of the miscarried fetus less than 72 hours after the miscarriage occurs; or
 - (ii) immediate disposition is required under state or federal law.
 - (c) A health care facility may serve as an authorizing agent as defined in Section 58-9-102 with respect to the final disposition of a miscarried fetus if:
- 6204 (i) the parent provides written authorization for the health care facility to act as the 6205 authorizing agent; or
 - (ii) (A) more than 72 hours have passed since the miscarriage occurs; and

- (B) the parent did not exercise their right to control the final disposition of the 6207 6208 miscarried fetus under Subsection (4)(a). 6209 (d) Within 120 business days after the day on which a miscarriage occurs, a health 6210 care facility possessing miscarried remains shall: 6211 (i) conduct the final disposition of the miscarried remains in accordance with this 6212 section; or 6213 (ii) ensure that the miscarried remains are preserved until final disposition. 6214 (e) A health care facility shall conduct the final disposition under this section in 6215 accordance with applicable state and federal law. 6216 (3) (a) No more than 24 hours after a woman has her miscarried fetus expelled or extracted in a health care facility, the health care facility shall provide information to the 6217 6218 parent or parents of the miscarried fetus regarding: 6219 (i) the parents' right to determine the final disposition of the miscarried fetus; 6220 (ii) the available options for disposition of the miscarried fetus; and 6221 (iii) counseling that may be available concerning the death of the miscarried fetus. 6222 (b) A health care facility shall: 6223 (i) provide the information described in Subsection (3)(a) through: 6224 (A) a form approved by the department; 6225 (B) an in-person consultation with a physician; or 6226 (C) an in-person consultation with a mental health therapist as defined in Section 6227 58-60-102; and 6228 (ii) if the parent or parents make a decision under Subsection (4)(b), document the 6229 parent's decision under Subsection (4)(b) in the parent's medical record. (4) The parents of a miscarried fetus: 6230 6231 (a) have the right to control the final disposition of the miscarried fetus; 6232 (b) if the parents have a preference for disposition of the miscarried fetus, shall inform 6233 the health care facility of the parents' decision for final disposition of the miscarried fetus; and (c) are responsible for the costs related to the final disposition of the miscarried fetus 6234 at the chosen location if the parents choose a method or location for the final disposition of 6235
 - the miscarried fetus that is different from the method or location that is usual and customary for the health care facility
- for the health care facility.

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(5) The form described in Subsection (3)(b)(i) shall include the following information:

- "You have the right to decide what you would like to do with the miscarried fetus. You may decide for the provider to be responsible for disposition of the fetus. The provider may dispose of the miscarried fetus by burial or cremation. You can ask the provider if you want to know the specific method for disposition."
- 6243 (6) (a) A health care facility may not include a miscarried fetus with other biological, 6244 infectious, or pathological waste.
- 6245 (b) Fetal tissue that is sent for permanently fixed pathology or used for genetic study 6246 is not subject to the requirements of this section.
- 6247 (c) (i) A health care facility is responsible for maintaining a record to demonstrate to 6248 the department that the health care facility has complied with the provisions of this section.
 - (ii) The records described in Subsection (6)(c)(i) shall be:
 - (A) maintained for at least two years; and
- (B) made available to the department for inspection upon request by the department.
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- 6253 [26-21-35.] 26B-2-234. Resident consumer protection.
- 6254 (1) As used in this section:
- 6255 (a) "Eligible requester" means:
- 6256 (i) a resident;
- 6257 (ii) a prospective resident;
- 6258 (iii) a legal representative of a resident or prospective resident; or
- 6259 (iv) the department.
- (b) "Facility" means an assisted living facility or nursing care facility.
- 6261 (c) "Facility's leadership" means a facility's:
- 6262 (i) owner;
- 6263 (ii) administrator:
- 6264 (iii) director; or
- 6265 (iv) employee that is in a position to determine which providers have access to the 6266 facility.
- 6267 (d) "Personal care agency" means a person that provides assistance with activities of 6268 daily living.
- 6269 (e) "Provider" means a home health agency, hospice provider, medical provider, or personal care agency.

- (f) "Resident" means an individual who resides in a facility.
 (2) Subject to other state or federal laws, a facility may limit which providers have
 access to the facility if the facility complies with Subsection (3).
 (3) (a) A facility that prohibits a provider from accessing the facility shall:
 (i) before or at the time a prospective resident or prospective resident's legal
 - (i) before or at the time a prospective resident or prospective resident's legal representative signs an admission contract, inform the prospective resident or prospective resident's legal representative that the facility prohibits one or more providers from accessing the facility;
- 6279 (ii) if an eligible requester requests to know which providers have access to the 6280 facility, refer the eligible requester to a member of the facility's leadership; and
- 6281 (iii) if a provider requests to know whether the provider has access to the facility, refer 6282 the provider to a member of the facility's leadership.
- (b) If a facility refers an eligible requester to a member of the facility's leadership under Subsection (3)(a)(ii), the member of the facility's leadership shall inform the eligible requester:
 - (i) which providers the facility:

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- (A) allows to access the facility; or
- (B) prohibits from accessing the facility;
- (ii) that a provider's access to the facility may change at any time; and
- 6290 (iii) whether a person in the facility's leadership has a legal or financial interest in a 6291 provider that is allowed to access the facility.
 - (c) If a facility refers a provider to a member of the facility's leadership under Subsection (3)(a)(iii), the member of the facility's leadership:
 - (i) shall disclose whether the provider has access to the facility; and
 - (ii) may disclose any other information described in Subsection (3)(b).
- 6296 (d) If a resident is being served by a provider that is later prohibited from accessing 6297 the facility, the facility shall:
- 6298 (i) allow the provider access to the facility to finish the resident's current episode of 6299 care; or
- 6300 (ii) provide to the resident a written explanation of why the provider no longer has access to the facility.
 - (4) This section does not apply to a facility operated by a government unit.

6303	(5) The department may issue a notice of deficiency if a facility that denies a provider					
6304	access under Subsection (2) does not comply with Subsection (3) at the time of the denial.					
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6306	[26-21c-103.] <u>26B-2-235.</u> [Protocols] <u>Sepsis protocols for general acute</u>					
6307	hospitals.					
6308	(1) As used in this section, "sepsis" means a life-threatening complication of an					
6309	infection.					
6310	[(1)] (2) [Hospitals] A general acute hospital may develop protocols for the					
6311	treatment of sepsis and septic shock that are consistent with current evidence-based					
6312	guidelines for the treatment of severe sepsis and septic shock.					
6313	[(2)] (3) When developing the protocols described in Subsection [(1)] (2), a general					
6314	acute hospital shall consider:					
6315	(a) a process for screening and recognizing patients with sepsis;					
6316	(b) a process to screen out individuals for whom the protocols would not be					
6317	appropriate for treating sepsis;					
6318	(c) timeline goals for treating sepsis;					
6319	(d) different possible methods for treating sepsis and reasons to use each method;					
6320	(e) specific protocols to treat children who present with symptoms of sepsis or septic					
6321	shock; and					
6322	(f) training requirements for staff.					
6323	[(3)] (4) A general acute hospital may update the general acute hospital's sepsis					
6324	protocols as new data on the treatment of sepsis and septic shock becomes available.					
6325	(5) The department, or an entity assigned by the department to inspect a general					
6326	acute hospital, may request a copy of the sepsis protocols described in this section when					
6327	inspecting a general acute hospital.					
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6329	[26-21-303.] <u>26B-2-236.</u> Monitoring device <u>in an assisted living facility</u>					
6330	Installation, notice, and consent [Liability] Admission, discharge, and notice.					
6331	(1) As used in this section:					
6332	(a) "Legal representative" means an individual who is legally authorized to make					
6333	health care decisions on behalf of another individual.					
6334	(b) (i) "Monitoring device" means:					

6335	(A) a video surveillance camera; or					
6336	(B) a microphone or other device that captures audio.					
6337	(ii) "Monitoring device" does not include:					
6338	(A) a device that is specifically intended to intercept wire, electronic, or oral					
6339	communication without notice to or the consent of a party to the communication; or					
6340	(B) a device that is connected to the Internet or that is set up to transmit data via an					
6341	electronic communication.					
6342	(c) "Resident" means an individual who receives health care from a facility.					
6343	(d) "Room" means a resident's private or shared primary living space.					
6344	(e) "Roommate" means an individual sharing a room with a resident.					
6345	[(1)] (2) A resident or the resident's legal representative may operate or install a					
6346	monitoring device in the resident's room if the resident and the resident's legal					
6347	representative, if any, unless the resident is incapable of informed consent:					
6348	(a) notifies the resident's assisted living facility in writing that the resident or the					
6349	resident's legal representative, if any:					
6350	(i) intends to operate or install a monitoring device in the resident's room; and					
6351	(ii) consents to a waiver agreement, if required by [a] an assisted living facility;					
6352	(b) obtains written consent from each of the resident's roommates, and their legal					
6353	representative, if any, that specifically states the hours when each roommate consents to the					
6354	resident or the resident's legal representative operating the monitoring device; and					
6355	(c) assumes all responsibility for any cost related to installing or operating the					
6356	monitoring device.					
6357	[(2) A] (3) An assisted living facility shall not be civilly or criminally liable to:					
6358	(a) a resident or resident's roommate for the operation of a monitoring device					
6359	consistent with this part; and					
6360	(b) any person other than the resident or resident's roommate for any claims related					
6361	to the use or operation of a monitoring device consistent with this part, unless the claim is					
6362	caused by the acts or omissions of an employee or agent of the assisted living facility.					
6363	(4) (a) An assisted living facility may not deny an individual admission to the facility for					
6364	the sole reason that the individual or the individual's legal representative requests to install or					
6365	operate a monitoring device in the individual's room.					
6366	(b) An assisted living facility may not discharge a resident for the sole reason that the					

6367 resident or the resident's legal representative requests to install or operate a monitoring 6368 device in the individual's room. (c) An assisted living facility may require the resident or the resident's legal 6369 6370 representative to place a sign near the entrance of the resident's room that states that the 6371 room contains a monitoring device. [(3)] (5) Notwithstanding any other provision of this part, an individual may not, under 6372 this part, operate a monitoring device in [a] an assisted living facility without a court order: 6373 6374 (a) in secret; or 6375 (b) with an intent to intercept a wire, electronic, or oral communication without notice 6376 to or the consent of a party to the communication. 6377 6378 [26-21-305.] 26B-2-237. Transfer or discharge from an assisted living facility. 6379 (1) As used in this section: 6380 (a) "Ombudsman" means the same as that term is defined in Section 62A-3-202. 6381 (b) "Resident" means an individual who receives health care from a facility. 6382 (c) "Responsible person" means an individual who: (i) is designated in writing by a resident to receive communication on behalf of the 6383 6384 resident; or 6385 (ii) is legally authorized to make health care decisions on behalf of the resident. 6386 (2) When [a] an assisted living facility initiates the transfer or discharge of a resident, the assisted living facility shall: 6387 6388 [(1)] (a) notify the resident and the resident's responsible person, if any, in writing and in a language and a manner that is most likely to be understood by the resident and the 6389 6390 resident's responsible person, of: 6391 [(a)] (i) the reasons for the transfer or discharge; 6392 (ii) the effective date of the transfer or discharge; 6393 (c) (iii) the location to which the resident will be transferred or discharged, if known; 6394 and 6395 [(d)] (iv) the name, address, email, and telephone number of the ombudsman; 6396 $\frac{(2)}{(2)}$ (b) send a copy, in English, of the notice described in Subsection $\frac{(1)(a)}{(2)(a)}$ 6397 to the ombudsman on the same day on which the assisted living facility delivers the notice 6398 described in Subsection $\frac{(1)(a)}{(2)(a)}$ to the resident and the resident's responsible person;

6399 $[\frac{(3)}{(2)}]$ (c) provide the notice described in Subsection $[\frac{(1)(a)}{(2)}]$ (2)(a) at least 30 days 6400 before the day on which the resident is transferred or discharged, unless: (i) notice for a shorter period of time is necessary to protect: 6401 6402 (fi) (A) the safety of individuals in the assisted living facility from endangerment 6403 due to the medical or behavioral status of the resident; or (ii) (B) the health of individuals in the assisted living facility from endangerment 6404 6405 due to the resident's continued residency; [(b)] (ii) an immediate transfer or discharge is required by the resident's urgent 6406 6407 medical needs; or 6408 (iii) the resident has not resided in the assisted living facility for at least 30 6409 days: 6410 (4) update the transfer or discharge notice as soon as practicable before the transfer or discharge if information in the notice changes before the transfer or discharge: 6411 6412 [(5)] (e) orally explain to the resident: 6413 (i) the services available through the ombudsman; and 6414 [(b)] (ii) the contact information for the ombudsman; and 6415 (6) (f) provide and document the provision of preparation and orientation for the 6416 resident, in a language and manner the resident is most likely to understand, [for a resident] to ensure a safe and orderly transfer or discharge from the assisted living facility[; and]. 6417 6418 [(7)] (3) [in] In the event of [a] an assisted living facility closure, the assisted living 6419 facility shall provide written notification of the closure to the ombudsman, each resident of 6420 the facility, and each resident's responsible person. 6421 6422 [26-21-201.] 26B-2-238. Definitions for Sections 26B-2-238 through 26B-2-240. 6423 As used in [this part] Sections 26B-2-238 through 26B-2-240: (1) "Clearance" means approval by the department under Section [26-21-203] 6424 6425 26B-2-239 for an individual to have direct patient access. (2) "Covered body" means a covered provider, covered contractor, or covered 6426 6427 employer. 6428 (3) "Covered contractor" means a person that supplies covered individuals, by 6429 contract, to a covered employer or covered provider.

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(4) "Covered employer" means an individual who:

6431 (a) engages a covered individual to provide services in a private residence to: (i) an aged individual, as defined by department rule; or 6432 (ii) a disabled individual, as defined by department rule; 6433 6434 (b) is not a covered provider; and 6435 (c) is not a licensed health care facility within the state. (5) "Covered individual": 6436 (a) means an individual: 6437 (i) whom a covered body engages; and 6438 (ii) who may have direct patient access; 6439 6440 (b) includes: (i) a nursing assistant, as defined by department rule: 6441 6442 (ii) a personal care aide, as defined by department rule; 6443 (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 6444 31b, Nurse Practice Act; 6445 (iv) a provider of medical, therapeutic, or social services, including a provider of 6446 laboratory and radiology services; 6447 (v) an executive; 6448 (vi) administrative staff, including a manager or other administrator; 6449 (vii) dietary and food service staff; 6450 (viii) housekeeping and maintenance staff; and 6451 (ix) any other individual, as defined by department rule, who has direct patient 6452 access; and 6453 (c) does not include a student, as defined by department rule, directly supervised by a 6454 member of the staff of the covered body or the student's instructor. 6455 (6) "Covered provider" means: (a) an end stage renal disease facility; 6456 6457 (b) a long-term care hospital; 6458 (c) a nursing care facility; (d) a small health care facility; 6459 6460 (e) an assisted living facility; 6461 (f) a hospice; 6462 (g) a home health agency; or

6463 (h) a personal care agency. (7) "Direct patient access" means for an individual to be in a position where the 6464 6465 individual could, in relation to a patient or resident of the covered body who engages the individual: 6466 6467 (a) cause physical or mental harm; 6468 (b) commit theft; or (c) view medical or financial records. 6469 (8) "Engage" means to obtain one's services: 6470 (a) by employment; 6471 6472 (b) by contract; 6473 (c) as a volunteer; or 6474 (d) by other arrangement. (9) "Long-term care hospital": 6475 6476 (a) means a hospital that is certified to provide long-term care services under the 6477 provisions of 42 U.S.C. Sec. 1395tt; and 6478 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 6479 1395i-4(c)(2). 6480 (10) "Patient" means an individual who receives health care services from one of the 6481 following covered providers: 6482 (a) an end stage renal disease facility; 6483 (b) a long-term care hospital; 6484 (c) a hospice; (d) a home health agency; or 6485 6486 (e) a personal care agency. 6487 (11) "Personal care agency" means a health care facility defined by department rule. (12) "Resident" means an individual who receives health care services from one of 6488 6489 the following covered providers: 6490 (a) a nursing care facility; 6491 (b) a small health care facility; 6492 (c) an assisted living facility; or 6493 (d) a hospice that provides living quarters as part of its services. 6494 (13) "Residential setting" means a place provided by a covered provider:

6495	(a) for residents to live as part of the services provided by the covered provider; and
6496	(b) where an individual who is not a resident also lives.
6497	(14) "Volunteer" means an individual, as defined by department rule, who provides
6498	services without pay or other compensation.
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6500	[26-21-202.] <u>26B-2-239.</u> Clearance required <u> Application by covered</u>
6501	providers, covered contractors, and individuals.
6502	(1) The definitions in Section 26B-2-237 apply to this section.
6503	[(1)] (2) (a) A covered provider may engage a covered individual only if the individual
6504	has clearance.
6505	[(2)] (b) A covered contractor may supply a covered individual to a covered employer
6506	or covered provider only if the individual has clearance.
6507	[(3)] <u>(c)</u> A covered employer may engage a covered individual who does not have
6508	clearance.
6509	[(4)] <u>(3)</u> (a) Notwithstanding Subsections [(1) and (2)] <u>(2)(a) and (b)</u> , if a covered
6510	individual does not have clearance, a covered provider may engage the individual or a
6511	covered contractor may supply the individual to a covered provider or covered employer:
6512	(i) under circumstances specified by department rule; and
6513	(ii) only while an application for clearance for the individual is pending.
6514	(b) For purposes of Subsection $\left[\frac{(4)(a)}{a}\right]$ (3)(a), an application is pending if the
6515	following have been submitted to the department for the individual:
6516	(i) an application for clearance;
6517	(ii) the personal identification information specified by the department under
6518	Subsection [26-21-204(4)(b)] <u>26B-2-239(4)(b)</u> ; and
6519	(iii) any fees established by the department under Subsection [26-21-204(9)]
6520	<u>26B-2-239(9)</u> .
6521	(4) (a) As provided in Subsection (4)(b), each covered provider and covered
6522	contractor operating in this state shall:
6523	(i) collect from each covered individual it engages, and each individual it intends to
6524	engage as a covered individual, the personal identification information specified by the
6525	department under Subsection 26B-2-239(4)(b); and

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(ii) submit to the department an application for clearance for the individual, including:

6527	(A) the personal identification information; and					
6528	(B) any fees established by the department under Subsection 26B-2-239(9).					
6529	(b) Clearance granted for an individual pursuant to an application submitted by a					
6530	covered provider or a covered contractor is valid until the later of:					
6531	(i) two years after the individual is no longer engaged as a covered individual; or					
6532	(ii) the covered provider's or covered contractor's next license renewal date.					
6533	(5) (a) A covered provider that provides services in a residential setting shall:					
6534	(i) collect the personal identification information specified by the department under					
6535	Subsection 26B-2-239(4)(b) for each individual 12 years of age or older, other than a					
6536	resident, who resides in the residential setting; and					
6537	(ii) submit to the department an application for clearance for the individual, including:					
6538	(A) the personal identification information; and					
6539	(B) any fees established by the department under Subsection 26B-2-239(9).					
6540	(b) A covered provider that provides services in a residential setting may allow an					
6541	individual 12 years of age or older, other than a resident, to reside in the residential setting					
6542	only if the individual has clearance.					
6543	(6) (a) An individual may apply for clearance by submitting to the department an					
6544	application, including:					
6545	(i) the personal identification information specified by the department under					
6546	Subsection 26B-2-239(4)(b); and					
6547	(ii) any fees established by the department under Subsection 26B-2-239(9).					
6548	(b) Clearance granted to an individual who makes application under Subsection (6)(a)					
6549	is valid for two years unless the department determines otherwise based on the department's					
6550	ongoing review under Subsection 26B-2-239(4)(a).					
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6552	[26-21-204.] <u>26B-2-240.</u> Department authorized to grant, deny, or revoke					
6553	clearance Department may limit direct patient access Clearance.					
6554	(1) The definitions in Section 26B-2-237 apply to this section.					
6555	[(1)] (2) (a) The department shall determine whether to grant clearance for each					
6556	applicant for whom it receives:					
6557	[(a)] (i) the personal identification information specified by the department under					
6558	Subsection (4)(b); and					

6559	[(b)] (ii) any fees established by the department under Subsection (9).
6560	(b) (i) As provided in this section, the department may grant, deny, or revoke
6561	clearance for an individual, including a covered individual.
6562	(ii) The department may limit the circumstances under which a covered individual
6563	granted clearance may have direct patient access, based on the relationship the factors
6564	under Subsection (4)(a) and other mitigating factors may have to patient and resident
6565	protection.
6566	[(2)] (c) The department shall establish a procedure for obtaining and evaluating
6567	relevant information concerning covered individuals, including fingerprinting the applicant and
6568	submitting the prints to the Criminal Investigations and Technical Services Division of the
6569	Department of Public Safety for checking against applicable state, regional, and national
6570	criminal records files.
6571	(3) The department may review the following sources to determine whether an
6572	individual should be granted or retain clearance, which may include:
6573	(a) Department of Public Safety arrest, conviction, and disposition records described
6574	in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
6575	information in state, regional, and national records files;
6576	(b) juvenile court arrest, adjudication, and disposition records, as allowed under
6577	Section 78A-6-209;
6578	(c) federal criminal background databases available to the state;
6579	(d) the [Department of Human Services] Division of Child and Family Services
6580	Licensing Information System described in Section 80-2-1002;
6581	(e) child abuse or neglect findings described in Section 80-3-404;
6582	(f) the [Department of Human Services] Division of Aging and Adult Services
6583	vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
6584	(g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;
6585	(h) licensing and certification records of individuals licensed or certified by the Division
6586	of Professional Licensing under Title 58, Occupations and Professions; and
6587	(i) the List of Excluded Individuals and Entities database maintained by the United
6588	States Department of Health and Human Services' Office of Inspector General.

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(4) The department shall adopt rules that:

(a) specify the criteria the department will use to determine whether an individual is

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6591	granted or retains clearance:
6592	(i) based on an initial evaluation and ongoing review of information under Subsection
6593	(3); and
6594	(ii) including consideration of the relationship the following may have to patient and
6595	resident protection:
6596	(A) warrants for arrest;
6597	(B) arrests;
6598	(C) convictions, including pleas in abeyance;
6599	(D) pending diversion agreements;
6600	(E) adjudications by a juvenile court under Section 80-6-701 if the individual is over
6601	28 years old and has been convicted, has pleaded no contest, or is subject to a plea in
6602	abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28
6603	years old; and
6604	(F) any other findings under Subsection (3); and
6605	(b) specify the personal identification information that must be submitted by an
6606	individual or covered body with an application for clearance, including:
6607	(i) the applicant's Social Security number; and
6608	(ii) fingerprints.
6609	(5) For purposes of Subsection (4)(a), the department shall classify a crime
6610	committed in another state according to the closest matching crime under Utah law,
6611	regardless of how the crime is classified in the state where the crime was committed.
6612	(6) The Department of Public Safety, the Administrative Office of the Courts, the
6613	Department of Human Services, the Division of Professional Licensing, and any other state
6614	agency or political subdivision of the state:
6615	(a) shall allow the department to review the information the department may review
6616	under Subsection (3); and
6617	(b) except for the Department of Public Safety, may not charge the department for
6618	access to the information.
6619	(7) The department shall adopt measures to protect the security of the information it
6620	reviews under Subsection (3) and strictly limit access to the information to department
6621	employees responsible for processing an application for clearance.

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(8) The department may disclose personal identification information specified under

- Subsection (4)(b) [to the Department of Human Services] within the department to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (3)(d) through (f).
- 6626 (9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:
 - (a) the cost of obtaining and reviewing information under Subsection (3);
- (b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under Section 26-21-209; and
- 6631 (c) other department costs related to the processing of the application and the 6632 ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance 6633 should be retained.

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- 6635 [26-21-209.] 26B-2-240. Direct Access Clearance System database -- Contents
- 6636 [-- Use] and use -- Department of Public Safety retention of information and notification
- -- No civil liability for providing information.
- (1) The definitions in Section 26B-2-237 apply to this section.
- 6639 [(1)] (2) The department shall create and maintain a Direct Access Clearance System database, which:
- (a) includes the names of individuals for whom the department has received:
- (i) an application for clearance under this part; or
- (ii) an application for background clearance under Section [26-8a-310] <u>26B-2-324</u>;

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- (b) indicates whether an application is pending and whether clearance has been granted and retained for:
- (i) an applicant under this part; and
- (ii) an applicant for background clearance under Section [26-8a-310] 26B-2-324.
- [(2)] (3) (a) The department shall allow covered providers and covered contractors to access the database electronically.
- (b) Data accessible to a covered provider or covered contractor is limited to the information under Subsections [(1)(a)(i) and (1)(b)(i)] (2)(a)(i) and (2)(b)(i) for:
 - (i) covered individuals engaged by the covered provider or covered contractor; and
- 6654 (ii) individuals:

6655	(A) whom the covered provider or covered contractor could engage as covered					
6656	individuals; and					
6657	(B) who have provided the covered provider or covered contractor with sufficient					
6658	personal identification information to uniquely identify the individual in the database.					
6659	(c) (i) The department may establish fees, in accordance with Section 63J-1-504, for					
6660	use of the database by a covered contractor.					
6661	(ii) The fees may include, in addition to any fees established by the department under					
6662	Subsection 26B-2-239(9), an initial set-up fee, an ongoing access fee, and a per-use fee.					
6663	(4) The Criminal Investigations and Technical Services Division within the Department					
6664	of Public Safety shall:					
6665	(a) retain, separate from other division records, personal information, including any					
6666	fingerprints, sent to it by the department pursuant to Subsection 26B-2-239(3)(a); and					
6667	(b) notify the department upon receiving notice that an individual for whom personal					
6668	information has been retained is the subject of:					
6669	(i) a warrant for arrest;					
6670	(ii) an arrest;					
6671	(iii) a conviction, including a plea in abeyance; or					
6672	(iv) a pending diversion agreement.					
6673	(5) A covered body is not civilly liable for submitting to the department information					
6674	required under this section, Section 26B-2-238, or Section 26B-2-239, or refusing to employ					
6675	an individual who does not have clearance to have direct patient access under Section					
6676	<u>26B-2-238.</u>					
6677						
6678	Part 3. Long Term Care Ombudsman.					
6679						
6680	[62A-3-202.] <u>26B-2-301.</u> Definitions.					
6681	As used in this part:					
6682	(1) "Assisted living facility" means the same as that term is defined in Section					
6683	26-21-2.					
6684	(2) "Auxiliary aids and services" means items, equipment, or services that assist in					
6685	effective communication between an individual who has a mental, hearing, vision, or speech					
6686	disability and another individual.					

- (3) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.
- 6692 (4) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
- (5) (a) "Long-term care facility" means:
- 6695 (i) a skilled nursing facility;
- (ii) except as provided in Subsection (5)(b), an intermediate care facility;
- 6697 (iii) a nursing home;

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- 6698 (iv) a small health care facility;
- (v) a small health care facility type N; or
- 6700 (vi) an assisted living facility.
- (b) "Long-term care facility" does not mean an intermediate care facility for people with an intellectual disability, as defined in Section 58-15-101.
- 6703 (6) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.
 - (7) "Ombudsman program" means the Long-Term Care Ombudsman Program.
 - (8) "Resident" means an individual who resides in a long-term care facility.
- 6707 (9) "Skilled nursing facility" means the same as that term is defined in Section 6708 58-15-101.
- 6709 (10) "Small health care facility" means the same as that term is defined in Section 6710 26-21-2.
 - (11) "Small health care facility type N" means a residence in which a licensed nurse resides and provides protected living arrangements, nursing care, and other services on a daily basis for two to three individuals who are also residing in the residence and are unrelated to the licensee.

6716 [62A-3-201.] 26B-2-302. Legislative findings -- Purpose -- Ombudsman.

(1) The Legislature finds and declares that the citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of

6719	long-term care facilities created to serve their specialized needs and problems; and that for
6720	the health, safety, and welfare of these citizens, the state should take appropriate action
6721	through an adequate legal framework to address their difficulties.

(2) The purpose of this part is to establish within the division the Long-Term Care Ombudsman Program for the citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care and to fulfill federal requirements.

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[62A-3-203.] <u>26B-2-303.</u> Long-Term Care Ombudsman Program --

Responsibilities.

- (1) (a) There is created within the division the ombudsman program for the purpose of promoting, advocating, and ensuring the adequacy of care received and the quality of life experienced by residents of long-term care facilities within the state.
- (b) Subject to the rules made under Section 62A-3-106.5, the ombudsman is responsible for:
 - (i) receiving and resolving complaints relating to residents of long-term care facilities;
- (ii) conducting investigations of any act, practice, policy, or procedure of a long-term care facility or government agency that the ombudsman has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of a resident of a long-term care facility;
- (iii) coordinating the department's services for residents of long-term care facilities to ensure that those services are made available to eligible citizens of the state; and
- (iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.
- (2) (a) A long-term care facility shall display an ombudsman program information poster in a location that is readily visible to all residents, visitors, and staff members.
- (b) The division is responsible for providing the posters, which shall include phone numbers for local ombudsman programs.

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- [62A-3-204.] 26B-2-304. Powers and responsibilities of ombudsman.
- The long-term care ombudsman shall:

- (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;
 - (2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;
 - (3) investigate an administrative act or omission of a long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;
 - (4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;
 - (5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;
 - (6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;
 - (7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the ombudsman program under this part; and
 - (8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

[62A-3-205.] <u>26B-2-305.</u> Procedures -- Adjudicative proceedings.

The ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the ombudsman's adjudicative proceedings.

[62A-3-206.] <u>26B-2-306.</u> Investigation of complaints -- Procedures.

- (1) The ombudsman shall investigate each complaint the ombudsman receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.
 - (2) In making an investigation, the ombudsman may engage in actions the

ombudsman considers appropriate, including: 6783

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- (a) making inquiries and obtaining information;
- (b) holding investigatory hearings;
- (c) entering and inspecting any premises, without notice to the facility, provided the 6786 investigator presents, upon entering the premises, identification as an individual authorized 6787 6788 by this part to inspect the premises; and
 - (d) inspecting or obtaining a book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to residents. subject to Subsection (3).
 - (3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain from the resident, or the resident's legal representative, permission in writing, orally, or through the use of auxiliary aids and services to review the records.
 - (b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the resident or the resident's legal representative. If the resident or the resident's legal representative refuses to give permission, the ombudsman shall record and abide by this decision.
 - (c) If the ombudsman's attempt to obtain permission fails for a reason other than the refusal of the resident or the resident's legal representative to give permission, the ombudsman may review the records.
 - (d) If the ombudsman has reasonable cause to believe that the resident is incompetent to give permission and that the resident's legal representative is not acting in the best interest of the resident, the ombudsman shall determine whether review of the resident's records is in the best interest of the resident. If the ombudsman determines that review of the resident's records is in the best interest of the resident, the ombudsman shall review the records.

[62A-3-207.] 26B-2-307. Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

(1) The ombudsman shall establish procedures to ensure that all files maintained by the ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or resident of a long-term care facility may

5815	not be disclosed by the ombudsman unless:	
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- 6816 (a) the complainant or resident, or the legal representative of either, consents in 6817 writing, orally, or through the use of auxiliary aids and services to the disclosure;
 - (b) disclosure is ordered by the court; or
- (c) the disclosure is approved by the ombudsman and is made, as part of an 6819 6820 investigation involving the resident, to an agency that:
 - (i) has statutory responsibility for the resident;
 - (ii) has statutory responsibility over the action alleged in the complaint;
 - (iii) is able to assist the ombudsman to achieve resolution of the complaint; or
- 6824 (iv) is able to provide expertise that would benefit the resident.
 - (2) Neither the ombudsman nor the ombudsman's agent or designee may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce this part.
 - (3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.
 - (4) (a) Discriminatory, disciplinary, or retaliatory action may not be taken against a volunteer or employee of a long-term care facility or governmental agency, or against a resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.
 - (b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

[62A-3-208.] 26B-2-308. Prohibited acts -- Penalty.

- (1) No person may:
- (a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;
- (b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;
 - (c) willfully interfere with the lawful actions of the ombudsman;

- (d) willfully refuse to comply with lawful demands of the ombudsman, including the 6847 6848 demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to a resident of a long-term care facility; or 6849 6850 (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect 6851 the outcome of a matter being investigated or of a matter that is before the ombudsman for 6852 determination of whether an investigation should be conducted. 6853 (2) Violation of any provision of this part constitutes a class B misdemeanor. 6854
 - [62A-3-209.] 26B-2-309. Assisted living facility transfers.
- 6856 (1) After the ombudsman receives a notice described in Subsection 26-21-305(1)(a), 6857 the ombudsman shall:
 - (a) review the notice; and

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- (b) contact the resident or the resident's responsible person to conduct a voluntary 6859 6860 interview.
 - (2) The voluntary interview described in Subsection (1)(b) shall:
- (a) provide the resident with information about the services available through the 6862 ombudsman: 6863
- (b) confirm the details in the notice described in Subsection 26-21-305(1)(a), 6864 6865 including:
 - (i) the name of the resident:
 - (ii) the reason for the transfer or discharge;
 - (iii) the date of the transfer or discharge; and
- 6869 (iv) a description of the resident's next living arrangement; and
- 6870 (c) provide the resident an opportunity to discuss any concerns or complaints the resident may have regarding: 6871
 - (i) the resident's treatment at the assisted living facility; and
- 6873 (ii) whether the assisted living facility treated the resident fairly when the assisted living facility transferred or discharged the resident. 6874
- (3) On or before November 1 of each year, the ombudsman shall provide a report to 6875 the Health and Human Services Interim Committee regarding: 6876
 - (a) the reasons why assisted living facilities are transferring residents;
 - (b) where residents are going upon transfer or discharge; and

6879	(c) the type and prevalence of complaints that the ombudsman receives regarding				
6880	assisted living facilities, including complaints about the process or reasons for a transfer or				
6881	discharge.				
6882					
6883	Part 4. Child Care Licensing.				
6884					
6885	[26-39-102.] <u>26B-2-401.</u> Definitions.				
6886	As used in this [chapter] <u>part</u> :				
6887	(1) "Advisory committee" means the Residential Child Care Licensing Advisory				
6888	Committee created in Section 26B-1-204.				
6889	(2) "Capacity limit" means the maximum number of qualifying children that a				
6890	regulated provider may care for at any given time, in accordance with rules made by the				
6891	department.				
6892	(3) (a) "Center based child care" means child care provided in a facility or program				
6893	that is not the home of the provider.				
6894	(b) "Center based child care" does not include:				
6895	(i) residential child care; or				
6896	(ii) care provided in a facility or program exempt under Section [26-39-403]				
6897	<u>26B-2-405</u> .				
6898	(4) "Certified provider" means a person who holds a certificate from the department				
6899	under Section [26-39-402] <u>26B-2-404</u> .				
6900	(5) "Child care" means continuous care and supervision of a qualifying child, that is:				
6901	(a) in lieu of care ordinarily provided by a parent in the parent's home;				
6902	(b) for less than 24 hours a day; and				
6903	(c) for direct or indirect compensation.				
6904	(6) "Child care program" means a child care facility or program operated by a				
6905	regulated provider.				
6906	(7) "Exempt provider" means a person who provides care described in Subsection				
6907	[26-39-403] <u>26B-2-405</u> (2).				
6908	(8) "Licensed provider" means a person who holds a license from the department				
6909	under Section [26-39-401] <u>26B-2-403</u> .				
6910	(9) "Licensing committee" means the Child Care Center Licensing Committee created				

6911	in Section 26B-1-204.					
6912	(10) "Public school" means:					
6913	(a) a school, including a charter school, that:					
6914	(i) is directly funded at public expense; and					
6915	(ii) provides education to qualifying children for any grade from first grade through					
6916	twelfth grade; or					
6917	(b) a school, including a charter school, that provides:					
6918	(i) preschool or kindergarten to qualifying children, regardless of whether the					
6919	preschool or kindergarten is funded at public expense; and					
6920	(ii) education to qualifying children for any grade from first grade through twelfth					
6921	grade, if each grade, from first grade to twelfth grade, that is provided at the school, is					
6922	directly funded at public expense.					
6923	(11) "Qualifying child" means an individual who is:					
6924	(a) (i) under the age of 13 years old; or					
6925	(ii) under the age of 18 years old, if the person has a disability; and					
6926	(b) a child of:					
6927	(i) a person other than the person providing care to the child;					
6928	(ii) a regulated provider, if the child is under the age of four; or					
6929	(iii) an employee or owner of a licensed child care center, if the child is under the age					
6930	of four.					
6931	(12) "Regulated provider" means a licensed provider or certified provider.					
6932	(13) "Residential child care" means child care provided in the home of the provider.					
6933						
6934	[26-39-301.] <u>26B-2-402.</u> Duties of the department Enforcement of [chapter]					
6935	part Licensing committee requirements.					
6936	(1) With regard to residential child care licensed or certified under this [chapter] part,					
6937	the department may:					
6938	(a) make and enforce rules to implement this [chapter] part and, as necessary to					
6939	protect qualifying children's common needs for a safe and healthy environment, to provide					
6940	for:					
6941	(i) adequate facilities and equipment; and					
6942	(ii) competent caregivers, considering the age of the children and the type of program					

6943 offered by the licensee; and

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- (b) make and enforce rules necessary to carry out the purposes of this [chapter] part , in the following areas:
- 6946 (i) requirements for applications, the application process, and compliance with other applicable statutes and rules;
 - (ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);
 - (iii) categories, classifications, and duration of initial and ongoing licenses;
- 6951 (iv) changes of ownership or name, changes in licensure status, and changes in 6952 operational status;
 - (v) license expiration and renewal, contents, and posting requirements;
 - (vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule; and
 - (vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees.
 - (2) The department shall enforce the rules established by the licensing committee, with the concurrence of the department, for center based child care.
 - (3) The department shall make rules that allow a regulated provider to provide after school child care for a reasonable number of qualifying children in excess of the regulated provider's capacity limit, without requiring the regulated provider to obtain a waiver or new license from the department.
 - (4) Rules made under this [chapter] part by the department, or the licensing committee with the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (5) (a) The licensing committee and the department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.
 - (b) The licensing committee and the department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.
 - (6) In licensing and regulating child care programs, the licensing committee and the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and

6975	types of	of child	care	provided.

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- 6976 (7) Notwithstanding the definition of "qualifying child" in Section 26-39-102, the
 licensing committee and the department shall count children through age 12 and children
 with disabilities through age 18 toward the minimum square footage requirement for indoor
 and outdoor areas, including the child of:
 - (a) a licensed residential child care provider; or
 - (b) an owner or employee of a licensed child care center.
- 6982 (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department 6983 may not exclude floor space used for furniture, fixtures, or equipment from the minimum 6984 square footage requirement for indoor and outdoor areas if the furniture, fixture, or 6985 equipment is used:
 - (a) by qualifying children;
 - (b) for the care of qualifying children; or
- 6988 (c) to store classroom materials.
 - (9) (a) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, is exempt from the licensing committee's and the department's group size restrictions, if the child to caregiver ratios are maintained, and adequate square footage is maintained for specific classrooms.
 - (b) An exemption granted under Subsection (9)(a) is transferrable to subsequent licensed operators at the center if a licensed child care center is continuously maintained at the center.
 - (10) The licensing committee, with the concurrence of the department, shall develop, by rule, a five-year phased-in compliance schedule for playground equipment safety standards.
- 6999 (11) The department shall set and collect licensing and other fees in accordance with 7000 Section 26B-1-209.

[26-39-401.] <u>26B-2-403.</u> Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section [26-39-403] <u>26B-2-405</u>, and subject to Subsection (2), a person shall obtain a license from the department if:
 - (a) the person provides center based child care for five or more qualifying children;
 - (b) the person provides residential child care for nine or more qualifying children; or

- Working Draft -- For Discussion Purposes Only 7007 (c) the person: 7008 (i) provides child care; (ii) is not required to obtain a license under Subsection (1)(a) or (b); and 7009 7010 (iii) requests to be licensed. 7011 (2) Notwithstanding Subsection (1), a certified provider may, in accordance with rules made by the department under Subsection [26-39-301] 26B-2-402 (3), exceed the certified 7012 7013 provider's capacity limit to provide after school child care without obtaining a license from the 7014 department. 7015 (3) The department may issue licenses for a period not exceeding 24 months to child 7016 care providers who meet the requirements of: 7017 (a) this [chapter] part; and 7018 (b) the department's rules governing child care programs. 7019 (4) A license issued under this [chapter] part is not assignable or transferable. 7020 7021 [26-39-402.] 26B-2-404. Residential Child Care Certificate. 7022 (1) Except as provided in Section [26-39-403] 26B-2-405, a person shall obtain a 7023 Residential Child Care Certificate from the department if: 7024 (a) the person provides residential child care for seven or eight qualifying children; or 7025 (b) the person: 7026 (i) provides residential child care for six or less qualifying children; and 7027 (ii) requests to be certified.
- 7028 (2) The minimum qualifications for a Residential Child Care Certificate are:
- 7029 (a) the submission of:
- 7030 (i) an application in the form prescribed by the department;
- 7031 (ii) a certification and criminal background fee established in accordance with Section 26B-1-209; and
- (iii) in accordance with Section [26-39-404] <u>26B-2-406</u>, identifying information for each adult person and each juvenile age 12 through 17 years old who resides in the provider's home:
- 7036 (A) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;
- (B) to screen for a substantiated finding of child abuse or neglect by a juvenile court;

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7039	and
7040	(C) to discover whether the person is listed in the Licensing Information System
7041	described in Section 80-2-1002;
7042	(b) an initial and annual inspection of the provider's home within 90 days of sending
7043	an intent to inspect notice to:
7044	(i) check the immunization record, as defined in Section 53G-9-301, of each qualifying
7045	child who receives child care in the provider's home;
7046	(ii) identify serious sanitation, fire, and health hazards to qualifying children; and
7047	(iii) make appropriate recommendations; and
7048	(c) annual training consisting of 10 hours of department-approved training as
7049	specified by the department by administrative rule, including a current department-approved
7050	CPR and first aid course.
7051	(3) If a serious sanitation, fire, or health hazard has been found during an inspection
7052	conducted pursuant to Subsection (2)(b), the department shall require corrective action for
7053	the serious hazards found and make an unannounced follow up inspection to determine
7054	compliance.
7055	(4) In addition to an inspection conducted pursuant to Subsection (2)(b), the
7056	department may inspect the home of a certified provider in response to a complaint of:
7057	(a) child abuse or neglect;
7058	(b) serious health hazards in or around the provider's home; or
7059	(c) providing residential child care without the appropriate certificate or license.
7060	(5) With respect to residential child care, the department may only make and enforce
7061	rules necessary to implement this section.
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7063	[26-39-403.] <u>26B-2-405.</u> Exclusions from [chapter] <u>part</u> Criminal
7064	background checks by an excluded person.
7065	(1) (a) Except as provided in Subsection (1)(b), the provisions and requirements of this
7066	[chapter] part do not apply to:
7067	(i) a facility or program owned or operated by an agency of the United States

government;

(ii) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;

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- 7071 (iii) a health care facility licensed [pursuant to Title 26, Chapter 21] under Part 2, 7072 Health Care Facility Licensing and Inspection [Act];
 - (iv) care provided to a qualifying child by or in the home of a parent, legal guardian, grandparent, brother, sister, uncle, or aunt;
 - (v) care provided to a qualifying child, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state;
 - (vi) care provided at a residential support program that is licensed by the [Department of Human Services] department;
 - (vii) center based child care for four or less qualifying children, unless the provider requests to be licensed under Section [26-39-401] 26B-2-403; or
 - (viii) residential child care for six or less qualifying children, unless the provider requests to be licensed under Section [26-39-401] 26B-2-403 or certified under Section [26-39-402] 26B-2-404.
 - (b) Notwithstanding Subsection (1)(a), a person who does not hold a license or certificate from the department under this [chapter] part may not, at any given time, provide child care in the person's home for more than 10 children in total under the age of 13, or under the age of 18 if a child has a disability, regardless of whether a child is related to the person providing child care.
 - (2) The licensing and certification requirements of this [chapter] part do not apply to:
 - (a) care provided to a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution:
 - (b) care provided to a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;
 - (c) care provided to a qualifying child at a public school by an organization other than the public school, if:
 - (i) the care is provided under contract with the public school or on school property; or
 - (ii) the public school accepts responsibility and oversight for the care provided by the

- 7103 organization; 7104 (d) care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit; 7105 7106 (e) care provided by an organization that: (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue 7107 Code: 7108 7109 (ii) provides care pursuant to a written agreement with: 7110 (A) a municipality, as defined in Section 10-1-104, that provides oversight for the 7111 program; or 7112 (B) a county that provides oversight for the program; and (iii) provides care to a child who is over the age of four and under the age of 13; or 7113 7114 (f) care provided to a qualifying child at a facility where: 7115 (i) the parent or guardian of the qualifying child is at all times physically present in the 7116 building where the care is provided and the parent or guardian is near enough to reach the 7117 child within five minutes if needed; 7118 (ii) the duration of the care is less than four hours for an individual qualifying child in 7119 any one day; 7120 (iii) the care is provided on a sporadic basis; 7121 (iv) the care does not include diapering a qualifying child; and 7122 (v) the care does not include preparing or serving meals to a qualifying child. 7123 (3) An exempt provider shall submit to the department: 7124 (a) the information required under Subsections [26-39-404] 26B-2-406 (1) and (2); 7125 and 7126 (b) of the children receiving care from the exempt provider: 7127 (i) the number of children who are less than two years old; 7128 (ii) the number of children who are at least two years old and less than five years old; 7129 and 7130 (iii) the number of children who are five years old or older. 7131 (4) An exempt provider shall post, in a conspicuous location near the entrance of the 7132 exempt provider's facility, a notice prepared by the department that:
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(b) provides the department's contact information for submitting a complaint.

(a) states that the facility is exempt from licensure and certification; and

- 7135 (5) (a) Except as provided in Subsection (5)(b), the department may not release the 7136 information the department collects from exempt providers under Subsection (3).
- 7137 (b) The department may release an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

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- [26-39-404.] <u>26B-2-406.</u> Disqualified individuals -- Criminal history checks -- Payment of costs.
- (1) (a) Each exempt provider, except as provided in Subsection (1)(c), and each person requesting a residential certificate or to be licensed or to renew a license under this [chapter] part shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:
- 7146 (i) owners;
- 7147 (ii) directors;
- 7148 (iii) members of the governing body;
- 7149 (iv) employees;
- 7150 (v) providers of care;
- 7151 (vi) volunteers, except parents of children enrolled in the programs; and
- 7152 (vii) all adults residing in a residence where child care is provided.
- 7153 (b) (i) The Utah Division of Criminal Investigation and Technical Services within the 7154 Department of Public Safety shall process the information required under Subsection (1)(a) 7155 to determine whether the individual has been convicted of any crime.
 - (ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.
 - (iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(b).
 - (c) An exempt provider who provides care to a qualifying child as part of a program administered by an educational institution that is regulated by the State Board of Education is not subject to this Subsection (1), unless required by the Child Care and Development Block Grant, 42 U.S.C. Secs. 9857-9858r.
- 7165 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a 7166 license under this [chapter] part shall submit to the department the name and other

7167 identifying information of any person age 12 through 17 who resides in the residence where 7168 the child care is provided. The identifying information required for a person age 12 through 7169 17 does not include fingerprints.

- (b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:
 - (i) the person described in Subsection (1) is under the age of 28; or
- 7174 (ii) the person described in Subsection (1) is:
- 7175 (A) over the age of 28; and

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- 7176 (B) has been convicted, has pleaded no contest, or is currently subject to a plea in 7177 abeyance or diversion agreement for a felony or misdemeanor.
 - (3) Except as provided in Subsections (4) and (5), a licensee under this [chapter] part or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:
- 7184 (a) provide child care;
 - (b) provide volunteer services for a child care program or an exempt provider:
- 7186 (c) reside at the premises where child care is provided; or
- 7187 (d) function as an owner, director, or member of the governing body of a child care 7188 program or an exempt provider.
- 7189 (4) (a) The department may, by rule, exempt the following from the restrictions of 7190 Subsection (3):
 - (i) specific misdemeanors; and
- 7192 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be 7193 misdemeanors.
- 7194 (b) In accordance with criteria established by rule, the executive director may consider 7195 and exempt individual cases not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3). 7196
 - (5) The restrictions of Subsection (3) do not apply to the following:
 - (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on

a date 10 years or more before the date of the criminal history check described in this section; or

- (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense adjudicated in juvenile court on a date 10 years or more before the date of the criminal history check described in this section.
- (6) The department may retain background check information submitted to the department for up to one year after the day on which the covered individual is no longer associated with a Utah child care provider.

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[26-39-405.] <u>26B-2-407.</u> Drinking water quality in child care centers.

A child care center, as defined in Section 19-4-115, may comply with Section 19-4-115.

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- [26-39-501.] <u>26B-2-408.</u> Investigations -- Records.
- 7213 [(1) The department may conduct investigations necessary to enforce the provisions 7214 of this chapter. (2) For purposes of]
- 7215 (1) As used in this section:
 - (a) "Anonymous complainant" means a complainant for whom the department does not have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.
 - (b) "Confidential complainant" means a complainant for whom the department has the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made, but who elects under Subsection (3)(c) not to be identified to the subject of the complaint.
 - (c) "Subject of the complaint" means the licensee or certificate holder about whom the complainant is informing the department.
- 7226 (2) The department may conduct investigations necessary to enforce the provisions of this part.
 - (3) (a) If the department receives a complaint about a child care program or an exempt provider, the department shall:
 - (i) solicit information from the complainant to determine whether the complaint

7231 suggests actions or conditions that could pose a serious risk to the safety or well-being of a 7232 qualifying child;

(ii) as necessary:

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- 7234 (A) encourage the complainant to disclose the minimum personal identifying 7235 information necessary, including the complainant's full name, for the department to attempt 7236 to subsequently communicate with the complainant;
- 7237 (B) inform the complainant that the department may not investigate an anonymous 7238 complaint:
 - (C) inform the complainant that the identity of a confidential complainant may be withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and
- 7241 (D) inform the complainant that the department may be limited in its use of 7242 information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B): 7243 and
 - (iii) inform the complainant that a person is guilty of a class B misdemeanor under Section 76-8-506 if the person gives false information to the department with the purpose of inducing a change in that person's or another person's licensing or certification status.
 - (b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events which occurred more than six weeks before the complainant contacted the department:
 - (i) shall refer the information in the complaint to the Division of Child and Family Services within the [Department of Human Services] department, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a child;
 - (ii) may not investigate or substantiate the complaint; and
- 7255 (iii) may, during a regularly scheduled annual survey, inform the exempt provider, 7256 licensee, or certificate holder that is the subject of the complaint of allegations or concerns 7257 raised by:
 - (A) the anonymous complainant; or
- 7259 (B) the complainant who reported events more than six weeks after the events 7260 occurred.
- 7261 (c) (i) If the complainant elects to be a confidential complainant, the department shall 7262 determine whether the complainant wishes to remain confidential:

- 7263 (A) only until the investigation of the complaint has been completed; or
- 7264 (B) indefinitely.

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- (ii) (A) If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.
 - (B) If the complainant elects to remain confidential indefinitely, the department:
 - (I) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the complainant, including to the subject of the complaint; and
- 7272 (II) may not use information provided by the complainant to substantiate an alleged 7273 violation of state law or department rule unless the department independently corroborates 7274 the information.
- 7275 (4) (a) Prior to conducting an investigation of a child care program or an exempt 7276 provider in response to a complaint, a department investigator shall review the complaint with 7277 the investigator's supervisor.
 - (b) The investigator may proceed with the investigation only if:
 - (i) the supervisor determines the complaint is credible;
 - (ii) the complaint is not from an anonymous complainant; and
- 7281 (iii) prior to the investigation, the investigator informs the subject of the complaint of:
- 7282 (A) except as provided in Subsection (3)(c), the name of the complainant; and
- 7283 (B) except as provided in Subsection (4)(c), the substance of the complaint.
 - (c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation. However, the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.
- 7288 (5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:
- 7290 (a) shall be classified under Title 63G, Chapter 2, Government Records Access and 7291 Management Act, as:
- 7292 (i) a private or controlled record if appropriate under Section 63G-2-302 or 7293 63G-2-304; or
 - (ii) a protected record under Section 63G-2-305; and

- 7295 (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an 7296 individual child care program, exempt provider, licensee, certificate holder, or complainant.
 - (6) Any record of the department related to a complaint by an anonymous complainant is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that identifies an individual child care program, exempt provider, licensee, certificate holder, or complainant.

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[26-39-601.] <u>26B-2-409.</u> License violations -- Penalties.

- 7304 (1) The department may deny or revoke a license and otherwise invoke disciplinary penalties if it finds:
 - (a) evidence of committing or of aiding, abetting, or permitting the commission of any illegal act on the premises of the child care facility;
 - (b) a failure to meet the qualifications for licensure; or
- 7309 (c) conduct adverse to the public health, morals, welfare, and safety of children under 7310 its care.
 - (2) The department may also place a department representative as a monitor in a facility, and may assess the cost of that monitoring to the facility, until the licensee has remedied the deficiencies that brought about the department action.
 - (3) The department may impose civil monetary penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act, if there has been a failure to comply with the provisions of this [chapter] part, or rules made pursuant to this [chapter] part, as follows:
 - (a) if significant problems exist that are likely to lead to the harm of a qualifying child, the department may impose a civil penalty of \$50 to \$1,000 per day; and
 - (b) if significant problems exist that result in actual harm to a qualifying child, the department may impose a civil penalty of \$1,050 to \$5,000 per day.

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7322 [26-39-602.] 26B-2-410. Offering or providing care in violation of [chapter] part
7323 -- Misdemeanor.

Notwithstanding the provisions of Title 26, Chapter 23, Enforcement Provisions and Penalties, a person who provides or offers child care except as provided by this [chapter] part is guilty of a class A misdemeanor.

7327	Part 5. Certifications.
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7329	[26-71-101.] <u>26B-2-501.</u> Definitions.
7330	As used in this [chapter] <u>part</u> :
7331	(1) "Capacity building" means strengthening an individual's or a community's ability to
7332	participate in shared decision making.
7333	(2) "Community health worker" means an individual who:
7334	(a) works to improve a social determinant of health;
7335	(b) acts as an intermediary between a community and health services or social
7336	services to:
7337	(i) facilitate access to services; or
7338	(ii) improve the quality and cultural competence of service delivery; and
7339	(c) increases health knowledge and self-sufficiency of an individual or a community
7340	through outreach, capacity building, community education, informal counseling, social
7341	support, and other similar activities.
7342	(3) "Core-skill education" means education regarding each of the following:
7343	(a) self-reliance;
7344	(b) outreach;
7345	(c) capacity building;
7346	(d) individual and community assessment;
7347	(e) coordination skills;
7348	(f) relationship building;
7349	(g) facilitation of services;
7350	(h) communication;
7351	(i) professional conduct; and
7352	(j) health promotion.
7353	(4) "Core-skill training" means:
7354	(a) 90 hours of competency-based education; and
7355	(b) 300 hours of community involvement as determined by the department through
7356	rule.
7357	(5) "Social determinate of health" means any condition in which an individual or a
7358	community lives, learns, works, plays, worships, or ages, that affects the individual's or the

- community's health or quality of life outcomes or risks. 7359
- 7360 (6) "State certified" means that an individual has obtained the state certification described in Subsection 26-71-104(1). 7361

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- [26-71-102.] 26B-2-502. Rulemaking.
- The department may make rules as authorized by this [chapter] part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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- [26-71-103.] 26B-2-503. Recommendation for Community Health Worker
- **Certification Advisory Board.** 7368
 - The department shall notify the Health and Human Services Interim Committee if the department determines that there is a need to create, by statute, a Community Health Worker Certification Advisory Board.

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- [26-71-104.] 26B-2-504. Certification -- Unlawful conduct.
- 7374 (1) The department shall issue to an individual who qualifies under [this chapter] 7375 Section 26B-X-XXX a certification as a state certified community health worker.
 - (2) An individual may not use the term "state certified" in conjunction with the individual's work as a community health worker if the individual is not state certified.
- 7378 (3) The department may fine an individual who violates Subsection (2) in an amount up to \$100. 7379

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- [26-71-105.] 26B-2-505. Qualifications for certification.
- 7382 (1) The department shall issue a certification described in Section 26-71-104 to a 7383 community health worker if the community health worker has:
 - (a) completed core-skill training administered by:
- 7385 (i) the department:
- 7386 (ii) a state professional association that:
- 7387 (A) is associated with the community health worker profession; and
- 7388 (B) is aligned with a national community health worker professional association; or
- 7389 (iii) an entity designated by a state professional association described in Subsection
- 7390 (1)(a)(ii);

- 7391 (b) completed training regarding basic medical confidentiality requirements, including 7392 the confidentiality requirements of the Health Insurance Portability and Accountability Act of 7393 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended;
- 7394 (c) completed an application as designed by the department with a signed statement 7395 agreeing to abide by national standards of practice and ethics for community health workers; 7396 and
 - (d) paid a fee established by the department under Section 63J-1-504.
- 7398 (2) A community health worker with at least 4,000 hours of experience as a 7399 community health worker is exempt from the core-skill training requirement described in 7400 Subsection (1)(a).

[26-71-106.] 26B-2-406. Certification is voluntary. 7402

> This [chapter] part does not prohibit an individual from acting as a community health worker if the individual does not have a certificate described in this [chapter] part.

[26-71-107.] 26B-2-407. Term of certification - Expiration - Renewal.

- (1) Subject to Subsection (2), the department shall issue each certification under [this chapter | Section 26B-X-XXX in accordance with a two-year renewal cycle.
- 7409 (2) The department may by rule extend or shorten a renewal cycle by as much as one 7410 year to stagger the renewal cycles that the department administers.
 - (3) (a) The department shall print the expiration date on the certification.
 - (b) Each certification automatically expires on the date shown on the certificate.
 - (c) The department shall establish procedures through rule to notify each state certified community health worker when the certification is due for renewal.
 - (4) (a) The department shall renew a certification if the individual has:
 - (i) met each renewal requirement established by the department through rule; and
 - (ii) paid a certification renewal fee established by the department.
- 7418 (b) A rule created by the department under Subsection (4)(a)(i) shall include a 7419 requirement regarding:
 - (i) continuing education; and
- 7421 (ii) maintaining professional conduct.

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7423	Part 6. Mammography Quality Assurance.
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7425	[26-21a-101.] <u>26B-2-601.</u> Definitions.
7426	As used in this [chapter] <u>part</u> :
7427	(1) "Breast cancer screening mammography" means a standard two-view per breast,
7428	low-dose as defined by the National Cancer Institute, radiographic examination of the breasts
7429	to detect unsuspected breast cancer using equipment designed and dedicated specifically for
7430	mammography.
7431	(2) "Diagnostic mammography" means mammography performed on a woman having
7432	suspected breast cancer.
7433	(3) "Facility" means a facility that provides screening or diagnostic breast
7434	mammography services.
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7436	[26-21a-203.] <u>26B-2-602.</u> Department rulemaking authority.
7437	The department shall make rules under Title 63G, Chapter 3, Utah Administrative
7438	Rulemaking Act:
7439	(1) establishing quality assurance standards for all facilities performing screening or
7440	diagnostic mammography and developing mammogram x-ray films, including notification and
7441	procedures for clinical follow-up of abnormal mammograms;
7442	(2) providing for:
7443	(a) collection and periodic reporting of mammography examinations and clinical
7444	follow-up data to the department;
7445	(b) certification and revocation of certification of mammogram facilities;
7446	(c) inspection of mammogram facilities, including entry of agents of the department
7447	into the facilities for inspections;
7448	(d) setting fees for certification; and
7449	(e) an appeal process regarding department certification decisions; and
7450	(3) requiring a facility that is certified under Section 26-21a-204 to comply with the
7451	notification requirement described in Section 26-21a-206.
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7453	[26-21a-204.] <u>26B-2-603.</u> Mammogram provider certification.
7454	(1) A mammogram may only be performed in a facility the department certifies as

7455	meeting:	
7456	(a)	the q

- (a) the qualifications and standards under Section 26-21a-203; and
- 7457 (b) the registration, licensing, and inspection requirements for radiation sources under 7458 Section 19-3-104.
- 7459 (2) Facilities desiring to perform mammograms shall request certification as a 7460 mammogram provider by the department under procedures established by department rule.

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[26-21a-205.] <u>26B-2-604.</u> Department duties.

- 7463 The department shall:
 - enforce rules established under this part;
- 7465 (2) implement and enforce the notice requirement in Section 26-21a-206;
- 7466 (3) authorize qualified department agents to conduct inspections of mammogram 7467 facilities under department rules;
 - (4) collect and credit fees for certification established by the department in accordance with Section 63J-1-504; and
 - (5) provide necessary administrative and staff support to the committee.

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[26-21a-206.] <u>26B-2-604.</u> Women's cancer screening notification requirement.

- (1) As used in this section, "dense breast tissue" means heterogeneously dense tissue or extremely dense tissue as defined in the Breast Imaging and Reporting Data System established by the American College of Radiology.
- (2) A facility that is certified under Section 26-21a-204 shall include the following notification and information with a mammography result provided to a patient with dense breast tissue:

"Your mammogram indicates that you have dense breast tissue. Dense breast tissue is common and is found in as many as half of all women. However, dense breast tissue can make it more difficult to fully and accurately evaluate your mammogram and detect early signs of possible cancer in the breast. This information is being provided to inform and encourage you to discuss your dense breast tissue and other breast cancer risk factors with your health care provider. Together, you can decide what may be best for you. A copy of your mammography report has been sent to your health care provider. Please contact them if you have any questions or concerns about this notice."

7487	[26-21a-301.] <u>26B-2-605.</u> Breast cancer mortality reduction program.
7488	The department shall create a breast cancer mortality reduction program. The
7489	program shall include:
7490	(1) education programs for health professionals regarding skills in cancer screening,
7491	diagnosis, referral, treatment, and rehabilitation based on current scientific knowledge;
7492	(2) education programs to assist the public in understanding:
7493	(a) the benefits of regular breast cancer screening;
7494	(b) resources available in the medical care system for cancer screening, diagnosis,
7495	referral, treatment, and rehabilitation; and
7496	(c) available options for treatment of breast cancer and the ramifications of each
7497	approach; and
7498	(3) subsidized screening mammography for low-income women as determined by the
7499	department standards.
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7501	Chapter 9. Recovery Services and Administration of Child Support.
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7503	Part 1. Office of Recovery Services.
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7505	[62A-11-103.] <u>26B-9-101.</u> Definitions.
7506	As used in this part:
7507	(1) "Account" means a demand deposit account, checking or negotiable withdrawal
7508	order account, savings account, time deposit account, or money-market mutual fund
7509	account.
7510	(2) "Cash medical support" means an obligation to equally share all reasonable and
7511	necessary medical and dental expenses of children.
7512	(3) "Child support services" or "IV-D child support services" means services provided
7513	pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.
7514	(4) "Director" means the director of the Office of Recovery Services.
7515	(5) "Disposable earnings" means that part of the earnings of an individual remaining
7516	after the deduction of all amounts required by law to be withheld.
7517	(6) "Financial institution" means:
7518	(a) a depository institution as defined in Section 7-1-103 or the Federal Deposit

- 7519 Insurance Act, 12 U.S.C. Sec. 1813(c);
- 7520 (b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12
- 7521 U.S.C. Sec. 1813(u);
- 7522 (c) any federal credit union or state credit union as defined in the Federal Credit
- Union Act, 12 U.S.C. Sec. 1752, including an institution-affiliated party of such a credit union
- 7524 as defined in 12 U.S.C. Sec. 1786(r);
- 7525 (d) a broker-dealer as defined in Section 61-1-13; or
- (e) any benefit association, insurance company, safe deposit company,
- money-market mutual fund, or similar entity authorized to do business in the state.
- 7528 (7) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12
- 7529 U.S.C. Sec. 3401.
- 7530 (8) (a) "Income" means earnings, compensation, or other payment due to an
- individual, regardless of source, whether denominated as wages, salary, commission, bonus,
- pay, or contract payment, or denominated as advances on future wages, salary, commission,
- bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay,
- 7534 and incentive pay.
- 7535 (b) "Income" includes:
- 7536 [(a)] (i) all gain derived from capital assets, labor, or both, including profit gained
- 7537 through sale or conversion of capital assets:
- 7538 [(b)] (ii) interest and dividends;
- 7539 [(c)] (iii) periodic payments made under pension or retirement programs or insurance
- 7540 policies of any type;
- 7541 [(d)] (iv) unemployment compensation benefits;
- 7542 [(e)] (v) workers' compensation benefits; and
- 7543 [(f)] (vi) disability benefits.
- 7544 (9) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et
- 7545 seq.
- 7546 (10) "New hire registry" means the centralized new hire registry created in Section
- 7547 35A-7-103.
- 7548 (11) "Obligee" means an individual, this state, another state, or other comparable
- 7549 jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or
- 7550 public assistance.

- 7551 (12) "Obligor" means a person, firm, corporation, or the estate of a decedent owing 7552 money to this state, to an individual, to another state, or other comparable jurisdiction in 7553 whose behalf this state is acting.
 - (13) "Office" means the Office of Recovery Services.
- 7555 (14) "Provider" means a person or entity that receives compensation from any public assistance program for goods or services provided to a public assistance recipient.
 - (15) "Public assistance" or "assistance" means:

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- 7558 (a) services or benefits provided under Title 35A, Chapter 3, Employment Support 7559 Act;
 - (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
- 7561 (c) foster care maintenance payments under Part E of Title IV of the Social Security 7562 Act, 42 U.S.C. Sec. 670, et seq.;
- 7563 (d) SNAP benefits as defined in Section 35A-1-102; or
- 7564 (e) any other public funds expended for the benefit of a person in need of financial, 7565 medical, food, housing, or related assistance.
 - (16) "State case registry" means the central, automated record system maintained by the office and the central, automated district court record system maintained by the Administrative Office of the Courts, that contains records which use standardized data elements, such as names, Social Security numbers and other uniform identification numbers, dates of birth, and case identification numbers, with respect to:
 - (a) each case in which services are being provided by the office under the state IV-D child support services plan; and
- 7573 (b) each support order established or modified in the state on or after October 1, 7574 1998.

7576 [62A-11-101.] 26B-9-102. Legislative intent -- Liberal construction.

It is the intent of the Legislature that the integrity of the public assistance programs of this state be maintained and that the taxpayers support only those persons in need and only as a resource of last resort. To this end, this part should be liberally construed.

[62A-11-102.] 26B-9-103. Office of Recovery Services -- Creation.

(1) There is created within the department the Office of Recovery Services which has

- 7583 the powers and duties provided by law.
- 7584 (2) The office is under the administrative and general supervision of the executive director.

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- [62A-11-104.] 26B-9-104. Duties of office.
- 7588 (1) The office has the following duties:
- 7589 (a) except as provided in Subsection (2), to provide child support services if:
- 7590 (i) the office has received an application for child support services;
- 7591 (ii) the state has provided public assistance; or
- 7592 (iii) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state;
- 7594 (b) to carry out the obligations of the department contained in this chapter and in Title
 7595 78B, Chapter 12, Utah Child Support Act; Chapter 14, Utah Uniform Interstate Family
 7596 Support Act; and Chapter 15, Utah Uniform Parentage Act, for the purpose of collecting child
 7597 support;
- 7598 (c) to collect money due the department which could act to offset expenditures by the 7599 state;
- 7600 (d) to cooperate with the federal government in programs designed to recover health 7601 and social service funds;
 - (e) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution, and reimbursable expenses owed to the state or any of its political subdivisions, if the office has contracted to provide collection services;
 - (f) to implement income withholding for collection of child support in accordance with Part 4, Income Withholding in IV-D Cases, of this chapter;
 - (g) to enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system in the manner provided for in Section 62A-11-304.5;
 - (h) to establish and maintain the state case registry in the manner required by the Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:
- 7612 (i) the amount of monthly or other periodic support owed under the order, and other 7613 amounts, including arrearages, interest, late payment penalties, or fees, due or overdue 7614 under the order;

	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
7615	(ii) any amount described in Subsection (1)(h)(i) that has been collected;
7616	(iii) the distribution of collected amounts;
7617	(iv) the birth date of any child for whom the order requires the provision of support;
7618	and
7619	(v) the amount of any lien imposed with respect to the order pursuant to this part;
7620	(i) to contract with the Department of Workforce Services to establish and maintain
7621	the new hire registry created under Section 35A-7-103;
7622	(j) to determine whether an individual who has applied for or is receiving cash
7623	assistance or Medicaid is cooperating in good faith with the office as required by Section
7624	62A-11-307.2;
7625	(k) to finance any costs incurred from collections, fees, General Fund appropriation,
7626	contracts, and federal financial participation; and
7627	(I) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4
7628	of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment
7629	of past-due child support, prior to taking action against a noncustodial parent to collect the
7630	alleged past-due support.
7631	(2) The office may not provide child support services to the Division of Child and
7632	Family Services for a calendar month when the child to whom the child support services
7633	relate is:
7634	(a) in the custody of the Division of Child and Family Services; and
7635	(b) lives in the home of a custodial parent of the child for more than seven
7636	consecutive days, regardless of whether:
7637	(i) the greater than seven consecutive day period starts during one month and ends in
7638	the next month; and
7639	(ii) the child is living in the home on a trial basis.
7640	(3) The Division of Child and Family Services is not entitled to child support, for a
7641	child to whom the child support relates, for a calendar month when child support services
7642	may not be provided under Subsection (2).
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7644	[62A-11-104.1.] <u>26B-9-105.</u> Disclosure of information regarding employees.

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(1) Upon request by the office, for purposes of an official investigation made in

connection with its duties under Section 62A-11-104, the following disclosures shall be made

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- (a) a public or private employer shall disclose an employee's name, address, date of birth, income, social security number, and health insurance information pertaining to the employee and the employee's dependents;
 - (b) an insurance organization subject to Title 31A, Insurance Code, or the insurance administrators of a self-insured employer shall disclose health insurance information pertaining to an insured or an insured's dependents, if known; and
 - (c) a financial institution subject to Title 7, Financial Institutions Act, shall disclose financial record information of a customer named in the request.
 - (2) The office shall specify by rule the type of health insurance and financial record information required to be disclosed under this section.
 - (3) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.
 - (4) An employer, financial institution, or insurance organization, or its agent or employee, is not civilly or criminally liable for providing information to the office in accordance with this section, whether the information is provided pursuant to oral or written request.

[62A-11-105.] 26B-9-106. Adjudicative proceedings.

The office and the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

[62A-11-106.] <u>26B-9-107.</u> Office may file as real party in interest -- Written consent to payment agreements -- Money judgment in favor of obligee considered to be in favor of office to extent of right to recover.

- (1) The office may file judicial proceedings as a real party in interest to establish, modify, and enforce a support order in the name of the state, any department of the state, the office, or an obligee.
- (2) No agreement between an obligee and an obligor as to past, present, or future obligations, reduces or terminates the right of the office to recover from that obligor on behalf of the department for public assistance provided, unless the department has consented to the agreement in writing.
 - (3) Any court order that includes a money judgment for support to be paid to an

obligee by any person is considered to be in favor of the office to the extent of the amount of the office's right to recover public assistance from the judgment debtor.

[62A-11-107.] <u>26B-9-108.</u> Director -- Powers of office -- Representation by county attorney or attorney general -- Receipt of grants -- Rulemaking and enforcement.

- (1) The director of the office shall be appointed by the executive director.
- (2) The office has power to administer oaths, certify to official acts, issue subpoenas, and to compel witnesses and the production of books, accounts, documents, and evidence.
- (3) The office has the power to seek administrative and judicial orders to require an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated.
- (4) The office has the power to enter into reciprocal child support enforcement agreements with foreign countries consistent with federal law and cooperative enforcement agreements with Indian Tribes.
- (5) The office has the power to pursue through court action the withholding, suspension, and revocation of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or orders relating to paternity or child support proceedings pursuant to Section 78B-6-315.
- (6) It is the duty of the attorney general or the county attorney of any county in which a cause of action can be filed, to represent the office. Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties arising under this chapter.
- (7) The office, with department approval, is authorized to receive any grants or stipends from the federal government or other public or private source designed to aid the efficient and effective operation of the recovery program.
- (8) The office may adopt, amend, and enforce rules as may be necessary to carry out the provisions of this chapter.

[62A-11-108.] 26B-9-109. Office designated as criminal justice agency --

Access by IV-D agencies to motor vehicle and law enforcement data through the office.

- (1) The office is designated as a criminal justice agency for the purpose of requesting and obtaining access to criminal justice information, subject to appropriate federal, state, and local agency restrictions governing the dissemination of that information.
- (2) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access through the office to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

7720 [62A-11-111.] <u>26B-9-110.</u> Lien provisions.

Provisions for collection of any lien placed as a condition of eligibility for any federally or state-funded public assistance program are as follows:

- (1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who was not eligible for old-age assistance but who participated in the assistance granted to the family is recoverable in the same manner as old-age assistance granted to the old-age recipient.
- (2) At the time of the settlement of a lien given as a condition of eligibility for the old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any additional money invested by the department in the home of an old-age recipient or recipients of other assistance programs either as payment of taxes, home and lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of sale and settlement of an estate as follows:
- (a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the total exemption, which shall be the only amount deductible from the market or appraised value of the property.
- (b) Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:
 - (i) cost of funeral expenses not exceeding \$1,500;
 - (ii) costs of terminal illness, provided the medical expenses have not been paid from

- any state or federally-funded assistance program;
- 7744 (iii) realty fees, if any;
- 7745 (iv) costs of revenue stamps, if any;
- (v) costs of abstract or title insurance, whichever is the least costly;
- (vi) attorney fees not exceeding the recommended fee established by the Utah State
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- 7749 (vii) administrator's fee not to exceed \$150;
- 7750 (viii) court costs; and
- 7751 (ix) delinquent taxes, if any.
- (c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:
- 7754 (i) a real estate fee; or
- 7755 (ii) an attorney fee.
- 7756 (3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed \$1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the \$1,000 exemption.
 - (4) When both husband and wife are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as provided in this section, is allowed.
 - (5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the recipients are husband and wife. When recipients are husband and wife who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).
 - (6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or

personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for persons with a physical or mental disability.

- (7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.
- (8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.
- (9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.
- (10) Liens shall become due and payable, and the department shall seek collection of each lien now held:
- (a) when the property to which the lien attaches is transferred to a third party prior to the recipient's death, provided, that if other property is purchased by the recipient to be used by the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;
- (b) upon the death of the recipient and the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;
 - (c) when a recipient voluntarily offers to settle the lien; or
- (d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.
- (11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien, shall be mailed to the recipient, the recipient's heirs, or administrators of the estate,

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7807 and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in 7808 Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The amount so certified constitutes the entire claim, as of the date of the certificate, against the real or 7809 7810 personal property of the recipient or the recipient's spouse. Any person dealing with the 7811 recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of 7812 the existing lien against that real or personal property. That amount, however, shall increase 7813 by accruing interest until time of final settlement, at the rate of 6% per annum, commencing 7814 six months after the lien becomes due and payable, or at the termination of probate 7815 proceedings, whichever occurs later.

- (12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).
- (13) All sums so recovered, except those credited to the federal government, shall be retained by the department.
- (14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules prescribed by the department. The department is authorized to execute and deliver any document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.
- (15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

[62A-1-117.] 26B-9-111. Assignment of support -- Children in state custody.

- (1) Child support is assigned to the department by operation of law when a child is residing outside of his home in the protective custody, temporary custody, custody, or care of the state for at least 30 days.
- (2) The department has the right to receive payment for child support assigned to it under Subsection (1).
- (3) The Office of Recovery Services is the payee for the department for payment received under this section.

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- [62A-11-303.] 26B-9-201. Definitions. 7841
- 7842 As used in this part:
- 7843 (1) "Adjudicative proceeding" means an action or proceeding of the office conducted 7844 in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) "Administrative order" means an order that has been issued by the office, the 7845 7846 department, or an administrative agency of another state or other comparable jurisdiction 7847 with similar authority to that of the office.
 - (3) "Assistance" or "public assistance" is defined in Section 62A-11-103.
 - (4) "Business day" means a day on which state offices are open for regular business.
- (5) "Child" means: 7850
- 7851 (a) a son or daughter under the age of 18 years who is not otherwise emancipated, 7852 self-supporting, married, or a member of the armed forces of the United States;
- (b) a son or daughter over the age of 18 years, while enrolled in high school during the 7853 7854 normal and expected year of graduation and not otherwise emancipated, self-supporting, 7855 married, or a member of the armed forces of the United States; or
- 7856 (c) a son or daughter of any age who is incapacitated from earning a living and is 7857 without sufficient means.
 - (6) "Child support" is defined in Section 62A-11-401.
 - (7) "Child support guidelines" or "guidelines" is defined in Section 78B-12-102.
- 7860 (8) "Child support order" or "support order" is defined in Section 62A-11-401.
- 7861 (9) "Child support services" or "IV-D child support services" is defined in Section 7862 62A-11-103.
- 7863 (10) "Court order" means a judgment or order of a tribunal of appropriate jurisdiction 7864 of this state, another state, Native American tribe, the federal government, or any other 7865 comparable jurisdiction.
 - (11) "Director" means the director of the Office of Recovery Services.
- 7867 (12) "Disposable earnings" is defined in Section 62A-11-103.
- 7868 (13) "High-volume automated administrative enforcement" in interstate cases means. 7869 on the request of another state, the identification by the office, through automatic data 7870 matches with financial institutions and other entities where assets may be found, of assets

7871 owned by persons who owe child support in the requesting state, and the seizure of the 7872 assets by the office, through levy or other appropriate processes.

(14) "Income" is defined in Section 62A-11-103.

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- 7874 (15) "Notice of agency action" means the notice required to commence an 7875 adjudicative proceeding in accordance with Section 63G-4-201.
- 7876 (16) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a duty of child support is owed, or who is entitled to reimbursement of 7877 7878 child support or public assistance.
- 7879 (17) "Obligor" means a person, firm, corporation, or the estate of a decedent owing a 7880 duty of support to this state, to an individual, to another state, or other corporate jurisdiction 7881 in whose behalf this state is acting.
- 7882 (18) "Office" is defined in Section 62A-11-103.
 - (19) "Parent" means a natural parent or an adoptive parent of a dependent child.
- 7884 (20) "Person" includes an individual, firm, corporation, association, political 7885 subdivision, department, or office.
 - (21) "Presiding officer" means a presiding officer described in Section 63G-4-103.
- (22) "Support" includes past-due, present, and future obligations established by: 7887
 - (a) a tribunal or imposed by law for the financial support, maintenance, medical, or dental care of a dependent child; and
 - (b) a tribunal for the financial support of a spouse or former spouse with whom the obligor's dependent child resides if the obligor also owes a child support obligation that is being enforced by the state.
 - (23) "Support debt," "past-due support," or "arrears" means the debt created by nonpayment of support.
 - (24) "Tribunal" means the district court, the Department of Human Services, the Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

[62A-11-302.] 26B-9-202. Common-law and statutory remedies augmented by act -- Public policy.

The state of Utah, exercising its police and sovereign power, declares that the

common-law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by this part, which is directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies provided in this part are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this part be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through public assistance programs.

[62A-11-303.5.] 26B-9-203. Application for child support services.

Any person applying to the office for child support services shall be required to attest to the truthfulness of the information contained in the application. The attestation shall indicate that the person believes that all information provided is true and correct to the best of their knowledge and that knowingly providing false or misleading information is a violation of Section 76-8-504 and may result in prosecution, case closure for failure to cooperate, or both.

[62A-11-303.7.] <u>26B-9-204.</u> Annual fee for child support services to a custodial parent who has not received TANF assistance.

- (1) The office shall impose an annual fee of \$35 in each case in which services are provided by the office if:
- (a) the custodial parent who received the services has never received assistance under a state program funded under Title IV, Part A of the Social Security Act; and
 - (b) the office has collected at least \$550 of child support in the case.
 - (2) The fee described in Subsection (1) shall be:
- (a) subject to Subsection (3), retained by the office from child support collected on behalf of the custodial parent described in Subsection (1)(a); or
 - (b) paid by the custodial parent described in Subsection (1)(a).
- 7932 (3) A fee retained under Subsection (2)(a) may not be retained from the first \$550 of child support collected in the case.
 - (4) The fees collected under this section shall be deposited in the General Fund as a

dedicated credit to be used by the office for the purpose of collecting child support.

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[62A-11-304.1.] <u>26B-9-205.</u> Expedited procedures for establishing paternity or establishing, modifying, or enforcing a support order.

- (1) The office may, without the necessity of initiating an adjudicative proceeding or obtaining an order from any other judicial or administrative tribunal, take the following actions related to the establishment of paternity or the establishment, modification, or enforcement of a support order, and to recognize and enforce the authority of state agencies of other states to take the following actions:
 - (a) require a child, mother, and alleged father to submit to genetic testing;
- (b) subpoena financial or other information needed to establish, modify, or enforce a support order, including:
- (i) the name, address, and employer of a person who owes or is owed support that appears on the customer records of public utilities and cable television companies; and
- (ii) information held by financial institutions on such things as the assets and liabilities of a person who owes or is owed support;
- (c) require a public or private employer to promptly disclose information to the office on the name, address, date of birth, social security number, employment status, compensation, and benefits, including health insurance, of any person employed as an employee or contractor by the employer;
- (d) require an insurance organization subject to Title 31A, Insurance Code, or an insurance administrator of a self-insured employer to promptly disclose to the office health insurance information pertaining to an insured or an insured's dependents, if known;
- (e) obtain access to information in the records and automated databases of other state and local government agencies, including:
 - (i) marriage, birth, and divorce records;
- (ii) state and local tax and revenue records providing information on such things as residential and mailing addresses, employers, income, and assets;
 - (iii) real and titled personal property records;
- 7964 (iv) records concerning occupational and professional licenses and the ownership and control of corporations, partnerships, and other business entities;
 - (v) employment security records;

- 7967 (vi) records of agencies administering public assistance programs; 7968 (vii) motor vehicle department records; and (viii) corrections records; 7969 7970 (f) upon providing notice to the obligor and obligee, direct an obligor or other payor to 7971 change the payee to the office if support has been assigned to the office under Section 35A-7-108 or if support is paid through the office pursuant to the Social Security Act, 42 7972 U.S.C. Sec. 654B; 7973 7974 (g) order income withholding in accordance with Part 4, Income Withholding in IV-D 7975 Cases: 7976 (h) secure assets to satisfy past-due support by: 7977 (i) intercepting or seizing periodic or lump-sum payments from: 7978 (A) a state or local government agency, including unemployment compensation, 7979 workers' compensation, and other benefits; and 7980 (B) judgments, settlements, and lotteries; 7981 (ii) attaching and seizing assets of an obligor held in financial institutions; 7982 (iii) attaching public and private retirement funds, if the obligor presently: 7983 (A) receives periodic payments; or 7984 (B) has the authority to withdraw some or all of the funds; and 7985 (iv) imposing liens against real and personal property in accordance with this section 7986 and Section 62A-11-312.5; and 7987 (i) increase monthly payments in accordance with Section 62A-11-320. 7988 (2) (a) When taking action under Subsection (1), the office shall send notice under 7989 this Subsection (2)(a) to the person or entity who is required to comply with the action if not a 7990 party to a case receiving IV-D services. 7991 (b) The notice described in Subsection (2)(a) shall include: 7992 (i) the authority of the office to take the action; 7993 (ii) the response required by the recipient; 7994 (iii) the opportunity to provide clarifying information to the office under Subsection
- 7995 (2)(c);
- 7996 (iv) the name and telephone number of a person in the office who can respond to 7997 inquiries; and
 - (v) the protection from criminal and civil liability extended under Subsection (7).

- (c) The recipient of a notice sent under this Subsection (2) shall promptly comply with the terms of the notice and may, if the recipient believes the office's request is in error, send clarifying information to the office setting forth the basis for the recipient's belief.
- 8002 (3) The office shall in any case in which it requires genetic testing under Subsection 8003 (1)(a):
 - (a) consider clarifying information if submitted by the obligee and alleged father;
 - (b) proceed with testing as the office considers appropriate;
- 8006 (c) pay the cost of the tests, subject to recoupment from the alleged father if paternity 8007 is established;
- 8008 (d) order a second test if the original test result is challenged, and the challenger pays the cost of the second test in advance; and
 - (e) require that the genetic test is:

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- 8011 (i) of a type generally acknowledged as reliable by accreditation bodies designated by 8012 the federal Secretary of Health and Human Services; and
 - (ii) performed by a laboratory approved by such an accreditation body.
- 8014 (4) The office may impose a penalty against an entity for failing to provide information requested in a subpoena issued under Subsection (1) as follows:
 - (a) \$25 for each failure to provide requested information; or
- (b) \$500 if the failure to provide requested information is the result of a conspiracy between the entity and the obligor to not supply the requested information or to supply false or incomplete information.
 - (5) (a) Unless a court or administrative agency has reduced past-due support to a sum certain judgment, the office shall provide concurrent notice to an obligor in accordance with Section 62A-11-304.4 of:
 - (i) any action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) if Subsection (5)(b)(iii) does not apply; and
 - (ii) the opportunity of the obligor to contest the action and the amount claimed to be past-due by filing a written request for an adjudicative proceeding with the office within 15 days of notice being sent.
- (b) (i) Upon receipt of a notice of levy from the office for an action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b), a person in possession of personal property of the obligor shall:

- 8031 (A) secure the property from unauthorized transfer or disposition as required by 8032 Section 62A-11-313; and
- 8033 (B) surrender the property to the office after 21 days of receiving the notice unless the 8034 office has notified the person to release all or part of the property to the obligor.
 - (ii) Unless released by the office, a notice of levy upon personal property shall be:
- 8036 (A) valid for 60 days; and

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- 8037 (B) effective against any additional property which the obligor may deposit or transfer 8038 into the possession of the person up to the amount of the levy.
- 8039 (iii) If the property upon which the office imposes a levy is insufficient to satisfy the 8040 specified amount of past-due support and the obligor fails to contest that amount under Subsection (5)(a)(ii), the office may proceed under Subsections (1)(h)(i)(B), (1)(h)(ii), 8041 8042 (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) against additional property of the obligor until the 8043 amount specified and the reasonable costs of collection are fully paid.
 - (c) Except as provided in Subsection (5)(b)(iii), the office may not disburse funds resulting from action requiring notice under Subsection (5)(a)(i) until:
 - (i) 21 days after notice was sent to the obligor; and
 - (ii) the obligor, if the obligor contests the action under Subsection (5)(a)(ii), has exhausted the obligor's administrative remedies and, if appealed to a district court, the district court has rendered a final decision.
 - (d) Before intercepting or seizing any periodic or lump-sum payment under Subsection (1)(h)(i)(A), the office shall:
 - (i) comply with Subsection 59-10-529(4)(a); and
- 8053 (ii) include in the notice required by Subsection 59-10-529(4)(a) reference to 8054 Subsection (1)(h)(i)(A).
 - (e) If Subsection (5)(a) or (5)(d) does not apply, an action against the real or personal property of the obligor shall be in accordance with Section 62A-11-312.5.
 - (6) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.
- 8059 (7) No employer, financial institution, public utility, cable company, insurance organization, its agent or employee, or related entity may be civilly or criminally liable for 8060 8061 providing information to the office or taking any other action requested by the office pursuant 8062 to this section.

8063	(8) The actions the office may take under Subsection (1) are in addition to the actions
8064	the office may take pursuant to Part 4, Income Withholding in IV-D Cases.
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8066	[62A-11-304.2.] <u>26B-9-206.</u> Issuance or modification of administrative order
8067	Compliance with court order Authority of office Stipulated agreements
8068	Notification requirements.
8069	(1) Through an adjudicative proceeding the office may issue or modify an
8070	administrative order that:
8071	(a) determines paternity;
8072	(b) determines whether an obligor owes support;
8073	(c) determines temporary orders of child support upon clear and convincing evidence
8074	of paternity in the form of genetic test results or other evidence;
8075	(d) requires an obligor to pay a specific or determinable amount of present and future
8076	support;
8077	(e) determines the amount of past-due support;
8078	(f) orders an obligor who owes past-due support and is obligated to support a child
8079	receiving public assistance to participate in appropriate work activities if the obligor is
8080	unemployed and is not otherwise incapacitated;
8081	(g) imposes a penalty authorized under this chapter;
8082	(h) determines an issue that may be specifically contested under this chapter by a
8083	party who timely files a written request for an adjudicative proceeding with the office; and
8084	(i) renews an administrative judgment.
8085	(2) (a) An abstract of a final administrative order issued under this section or a notice
8086	of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.
8087	(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:
8088	(i) docket the abstract or notice in the judgment docket of the court and note the time
8089	of receipt on the abstract or notice and in the judgment docket; and
8090	(ii) at the request of the office, place a copy of the abstract or notice in the file of a
8091	child support action involving the same parties.
8092	(3) If a judicial order has been issued, the office may not issue an order under
8093	Subsection (1) that is not based on the judicial order, except:

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(a) the office may establish a new obligation in those cases in which the juvenile court

8095 has ordered the parties to meet with the office to determine the support pursuant to Section 8096 78A-6-356; or

- (b) the office may issue an order of current support in accordance with the child 8097 8098 support guidelines if the conditions of Subsection 78B-14-207(2)(c) are met.
 - (4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.
 - (5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.
 - (6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.
 - (7) The obligor shall, after a notice of agency action has been served on the obligor in accordance with Section 63G-4-201, keep the office informed of:
 - (a) the obligor's current address;

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- (b) the name and address of current payors of income;
- (c) availability of or access to health insurance coverage; and
- 8111 (d) applicable health insurance policy information.

8113 [62A-11-304.4.] 26B-9-207. Filing of location information -- Service of process.

- (1) (a) Upon the entry of an order in a proceeding to establish paternity or to establish, modify, or enforce a support order, each party shall file identifying information and shall update that information as changes occur:
 - (i) with the court or administrative agency that conducted the proceeding; and
 - (ii) after October 1, 1998, with the state case registry.
- (b) The identifying information required under Subsection (1)(a) shall include the person's Social Security number, driver's license number, residential and mailing addresses, telephone numbers, the name, address, and telephone number of employers, and any other data required by the United States Secretary of Health and Human Services.
- (c) In any subsequent child support action involving the office or between the parties, state due process requirements for notice and service of process shall be satisfied as to a party upon:
 - (i) a sufficient showing that diligent effort has been made to ascertain the location of

8127	the party; and
8128	(ii) delivery of notice to the most recent residential or employer address filed with the
8129	court, administrative agency, or state case registry under Subsection (1)(a).
8130	(2) (a) The office shall provide individuals who are applying for or receiving services
8131	under this chapter or who are parties to cases in which services are being provided under
8132	this chapter:
8133	(i) with notice of all proceedings in which support obligations might be established or
8134	modified; and
8135	(ii) with a copy of any order establishing or modifying a child support obligation, or in
8136	the case of a petition for modification, a notice of determination that there should be no
8137	change in the amount of the child support award, within 14 days after issuance of such order
8138	or determination.
8139	(b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall
8140	be provided in accordance with Section 78B-14-614.
8141	(3) Service of all notices and orders under this part shall be made in accordance with
8142	Title 63G, Chapter 4, Administrative Procedures Act, the Utah Rules of Civil Procedure, or
8143	this section.
8144	(4) Consistent with Title 63G, Chapter 2, Government Records Access and
8145	Management Act, the office shall adopt procedures to classify records to prohibit the
8146	unauthorized use or disclosure of information relating to a proceeding to:
8147	(a) establish paternity; or
8148	(b) establish or enforce support.
8149	(5) (a) The office shall, upon written request, provide location information available in
8150	its files on a custodial or noncustodial parent to the other party or the other party's legal
8151	counsel provided that:
8152	(i) the party seeking the information produces a copy of the parent-time order signed
8153	by the court;
8154	(ii) the information has not been safeguarded in accordance with Section 454 of the
8155	Social Security Act;
8156	(iii) the party whose location is being sought has been afforded notice in accordance

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(iv) the party whose location is being sought has not provided the office with a copy of

with this section of the opportunity to contest release of the information;

a protective order, a current court order prohibiting disclosure, a current court order limiting or prohibiting the requesting person's contact with the party or child whose location is being sought, a criminal order, an administrative order pursuant to Section 80-2-707, or documentation of a pending proceeding for any of the above; and

- (v) there is no other state or federal law that would prohibit disclosure.
- (b) "Location information" shall consist of the current residential address of the custodial or noncustodial parent and, if different and known to the office, the current residence of any children who are the subject of the parent-time order. If there is no current residential address available, the person's place of employment and any other location information shall be disclosed.
- (c) For the purposes of this section, "reason to believe" under Section 454 of the Social Security Act means that the person seeking to safeguard information has provided to the office a copy of a protective order, current court order prohibiting disclosure, current court order prohibiting or limiting the requesting person's contact with the party or child whose location is being sought, criminal order signed by a court of competent jurisdiction, an administrative order pursuant to Section 80-2-707, or documentation of a pending proceeding for any of the above.
- (d) Neither the state, the department, the office nor its employees shall be liable for any information released in accordance with this section.
- (6) Custodial or noncustodial parents or their legal representatives who are denied location information in accordance with Subsection (5) may serve the Office of Recovery Services to initiate an action to obtain the information.

[62A-11-304.5.] 26B-9-208. Financial institutions.

- (1) The office shall enter into agreements with financial institutions doing business in the state:
- (a) to develop and operate, in coordination with such financial institutions, a data match system that:
 - (i) uses automated data exchanges to the maximum extent feasible; and
- (ii) requires a financial institution each calendar quarter to provide the name, record address, social security number, other taxpayer identification number, or other identifying information for each obligor who:

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8191 (A) maintains an account at the institution; and

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- 8192 (B) owes past-due support as identified by the office by name and social security 8193 number or other taxpayer identification number; and
 - (b) to require a financial institution upon receipt of a notice of lien to encumber or surrender assets held by the institution on behalf of an obligor who is subject to a child support lien in accordance with Section 62A-11-304.1.
 - (2) The office may pay a reasonable fee to a financial institution for compliance with Subsection (1)(a), which may not exceed the actual costs incurred.
 - (3) A financial institution may not be liable under any federal or state law to any person for any disclosure of information or action taken in good faith under Subsection (1).
 - (4) The office may disclose a financial record obtained from a financial institution under this section only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation.
 - (5) If an employee of the office knowingly, or by reason of negligence, discloses a financial record of an individual in violation of Subsection (4), the individual may bring a civil action for damages in a district court of the United States as provided for in the Social Security Act, 42 U.S.C. Sec. 669A.
- 8208 (6) The office shall provide notice and disburse funds seized or encumbered under 8209 this section in accordance with Section 62A-11-304.1.

[62A-11-305.] <u>26B-9-209.</u> Support collection services requested by agency of another state.

- (1) In accordance with Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act, the office may proceed to issue or modify an order under Section 62A-11-304.2 to collect under this part from an obligor who is located in or is a resident of this state regardless of the presence or residence of the obligee if:
- (a) support collection services are requested by an agency of another state that is operating under Part IV-D of the Social Security Act; or
 - (b) an individual applies for services.
- (2) The office shall use high-volume automated administrative enforcement, to the same extent it is used for intrastate cases, in response to a request made by another state's IV-D child support agency to enforce support orders.

	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
8223	(3) A request by another state shall constitute a certification by the requesting state:
8224	(a) of the amount of support under the order of payment of which is in arrears; and
8225	(b) that the requesting state has complied with procedural due process requirements
8226	applicable to the case.
8227	(4) The office shall give automated administrative interstate enforcement requests the
8228	same priority as a two-state referral received from another state to enforce a support order.
8229	(5) The office shall promptly report the results of the enforcement procedures to the
8230	requesting state.
8231	(6) As required by the Social Security Act, 42 U.S.C. Sec. 666(a)(14), the office shall
8232	maintain records of:
8233	(a) the number of requests for enforcement assistance received by the office under
8234	this section;
8235	(b) the number of cases for which the state collected support in response to those
8236	requests; and
8237	(c) the amount of support collected.
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8239	[62A-11-306.1.] <u>26B-9-210.</u> Issuance or modification of an order to collect
8240	support for persons not receiving public assistance.
8241	The office may proceed to issue or modify an order under Section 62A-11-304.2 and
8242	collect under this part even though public assistance is not being provided on behalf of a
8243	dependent child if the office provides support collection services in accordance with:
8244	(1) an application for services provided under Title IV-D of the federal Social Security
8245	Act;
8246	(2) the continued service provisions of Subsection 62A-11-307.2(5); or
8247	(3) the interstate provisions of Section 62A-11-305.
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8249	[62A-11-306.2.] <u>26B-9-211.</u> Mandatory review and adjustment of child support
8250	orders for TANF recipients.
8251	If a child support order has not been issued, adjusted, or modified within the previous
8252	three years and the children who are the subject of the order currently receive TANF funds,
8253	the office shall review the order, and if appropriate, move the tribunal to adjust the amount of

the order if there is a difference of 10% or more between the payor's ordered support amount

and the payor's support amount required under the guidelines.

[62A-11-307.1.] 26B-9-212. Collection directly from responsible parent.

- (1) The office may issue or modify an order under Section 62A-11-304.2 and collect under this part directly from a responsible parent if the procedural requirements of applicable law have been met and if public assistance is provided on behalf of that parent's dependent child. The direct right to issue an order under this Subsection (1) is independent of and in addition to the right derived from that assigned under Section 35A-3-108.
- (2) An order issuing or modifying a support obligation under Subsection (1), issued while public assistance was being provided for a dependent child, remains in effect and may be enforced by the office under Section 62A-11-306.1 after provision of public assistance ceases.
- (3) (a) The office may issue or modify an administrative order, subject to the procedural requirements of applicable law, that requires that obligee to pay to the office assigned support that an obligee receives and retains in violation of Subsection 62A-11-307.2(4) and may reduce to judgment any unpaid balance due.
- (b) The office may collect the judgment debt in the same manner as it collects any judgment for past-due support owed by an obligor.
- (4) Notwithstanding any other provision of law, the Office of Recovery Services shall have full standing and authority to establish and enforce child support obligations against an alleged parent currently or formerly in a same-sex marriage on the same terms as the Office of Recovery Services' authority against other mothers and fathers.

[62A-11-307.2.] 26B-9-213. Duties of obligee after assignment of support rights.

- (1) An obligee whose rights to support have been assigned under Section 35A-3-108 as a condition of eligibility for public assistance has the following duties:
- (a) Unless a good cause or other exception applies, the obligee shall, at the request of the office:
- (i) cooperate in good faith with the office by providing the name and other identifying information of the other parent of the obligee's child for the purpose of:
 - (A) establishing paternity; or

8287	(B) establishing, modifying, or enforcing a child support order;
8288	(ii) supply additional necessary information and appear at interviews, hearings, and
8289	legal proceedings; and
8290	(iii) submit the obligee's child and himself to judicially or administratively ordered
8291	genetic testing.
8292	(b) The obligee may not commence an action against an obligor or file a pleading to
8293	collect or modify support without the office's written consent.
8294	(c) The obligee may not do anything to prejudice the rights of the office to establish
8295	paternity, enforce provisions requiring health insurance, or to establish and collect support.
8296	(d) The obligee may not agree to allow the obligor to change the court or
8297	administratively ordered manner or amount of payment of past, present, or future support
8298	without the office's written consent.
8299	(2) (a) The office shall determine and redetermine, when appropriate, whether an
8300	obligee has cooperated with the office as required by Subsection (1)(a).
8301	(b) If the office determines that an obligee has not cooperated as required by
8302	Subsection (1)(a), the office shall:
8303	(i) forward the determination and the basis for it to the Department of Workforce
8304	Services, which shall inform the Department of Health of the determination, for a
8305	determination of whether compliance by the obligee should be excused on the basis of good
8306	cause or other exception; and
8307	(ii) send to the obligee:
8308	(A) a copy of the notice; and
8309	(B) information that the obligee may, within 15 days of notice being sent:
8310	(I) contest the office's determination of noncooperation by filing a written request for
8311	an adjudicative proceeding with the office; or
8312	(II) assert that compliance should be excused on the basis of good cause or other
8313	exception by filing a written request for a good cause exception with the Department of
8314	Workforce Services.
8315	(3) The office's right to recover is not reduced or terminated if an obligee agrees to
8316	allow the obligor to change the court or administratively ordered manner or amount of

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payment of support regardless of whether that agreement is entered into before or after

public assistance is furnished on behalf of a dependent child.

- (4) (a) If an obligee receives direct payment of assigned support from an obligor, the obligee shall immediately deliver that payment to the office.
 - (b) (i) If an obligee agrees with an obligor to receive payment of support other than in the court or administratively ordered manner and receives payment as agreed with the obligor, the obligee shall immediately deliver the cash equivalent of the payment to the office.
 - (ii) If the amount delivered to the office by the obligee under Subsection (4)(b)(i) exceeds the amount of the court or administratively ordered support due, the office shall return the excess to the obligee.
 - (5) If public assistance furnished on behalf of a dependent child is terminated, the office may continue to provide paternity establishment and support collection services. Unless the obligee notifies the office to discontinue these services, the obligee is considered to have accepted and is bound by the rights, duties, and liabilities of an obligee who has applied for those services.

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[62A-11-312.5.] 26B-9-214. Liens by operation of law and writs of garnishment.

- (1) Each payment or installment of child support is, on and after the date it is due, a judgment with the same attributes and effect of any judgment of a district court in accordance with Section 78B-12-112 and for purposes of Section 78B-5-202.
- (2) (a) A judgment under Subsection (1) or final administrative order shall constitute a lien against the real property of the obligor upon the filing of a notice of judgment-lien in the district court where the obligor's real property is located if the notice:
 - (i) specifies the amount of past-due support; and
 - (ii) complies with the procedural requirements of Section 78B-5-202.
- (b) Rule 69, Utah Rules of Civil Procedure, shall apply to any action brought to execute a judgment or final administrative order under this section against real or personal property in the obligor's possession.
- (3) (a) The office may issue a writ of garnishment against the obligor's personal property in the possession of a third party for a judgment under Subsection (1) or a final administrative order in the same manner and with the same effect as if the writ were issued on a judgment of a district court if:
- (i) the judgment or final administrative order is recorded on the office's automated case registry; and

- 8351 (ii) the writ is signed by the director or the director's designee and served by certified 8352 mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure.
 - (b) A writ of garnishment issued under Subsection (3)(a) is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 62A-11-316.

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[62A-11-313.] 26B-9-215. Effect of Lien.

- (1) After receiving notice that a support lien has been filed under this part by the office, no person in possession of any property which may be subject to that lien may pay over, release, sell, transfer, encumber, or convey that property to any person other than the office, unless he first receives:
 - (a) a release or waiver thereof from the office; or
 - (b) a court order that orders release of the lien on the basis that the debt does not exist or has been satisfied.
 - (2) Whenever any such person has in his possession earnings, deposits, accounts, or balances in excess of \$100 over the amount of the debt claimed by the office, that person may, without liability under this part, release that excess to the obligor.

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[62A-11-315.5.] 26B-9-216. Enforcement of liens arising in another state.

A lien arising in another state shall be accorded full faith and credit in this state, without any additional requirement of judicial notice or hearing prior to the enforcement of the lien, if the office, parent, or state IV-D agency who seeks to enforce the lien complies with Section 62A-11-304.1 or Section 62A-11-312.5.

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- [62A-11-316.] <u>26B-9-217.</u> Requirement to honor voluntary assignment of earnings -- Discharge of employee prohibited -- Liability for discharge -- Earnings subject to support lien or garnishment.
- (1) (a) Every person, firm, corporation, association, political subdivision, or department of the state shall honor, according to its terms, a duly executed voluntary assignment of earnings which is presented by the office as a plan to satisfy or retire a support debt or obligation.
 - (b) The requirement to honor an assignment of earnings, and the assignment of

earnings itself, are applicable whether the earnings are to be paid presently or in the future, and continue in effect until released in writing by the office.

- (c) Payment of money pursuant to an assignment of earnings presented by the office shall serve as full acquittance under any contract of employment, and the state shall defend the employer and hold him harmless for any action taken pursuant to the assignment of earnings.
- (d) The office shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.
- (2) An employer may not discharge or prejudice any employee because his earnings have been subjected to support lien, wage assignment, or garnishment for any indebtedness under this part.
- (3) If a person discharges an employee in violation of Subsection (2), he is liable to the employee for the damages he may suffer, and, additionally, to the office in an amount equal to the debt which is the basis of the assignment or garnishment, plus costs, interest, and attorneys' fees, or a maximum of \$1,000, whichever is less.
- (4) The maximum part of the aggregate disposable earnings of an individual for any work pay period which may be subjected to a garnishment to enforce payment of a judicial or administrative judgment arising out of failure to support dependent children may not exceed 50% of his disposable earnings for the work pay period.
- (5) The support lien or garnishment shall continue to operate and require that person to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until released in writing by the court or office.

[62A-11-319.] <u>26B-9-218.</u> Release of lien, attachment, or garnishment by department.

The office may, at any time, release a support lien, wage assignment, attachment, or garnishment on all or part of the property of the obligor, or return seized property without liability, if assurance of payment is considered adequate by the office, or if that action will facilitate collection of the support debt. However, that release or return does not prevent future action to collect from the same or other property. The office may also waive provisions providing for the collection of interest on accounts due, if that waiver would facilitate collection of the support debt.

8415	[62A-11-320.] 26B-9-219. Payment schedules.
8416	(1) The office may:
8417	(a) set or reset a level and schedule of payments at any time consistent with the
8418	income, earning capacity, and resources of the obligor; or
8419	(b) demand payment in full.
8420	(2) If a support debt is reduced to a schedule of payments and made subject to
8421	income withholding, the total monthly amount of the scheduled payment, current support
8422	payment, and cost of health insurance attributable to a child for whom the obligor has been
8423	ordered may only be subject to income withholding in an amount that does not exceed the
8424	maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15
8425	U.S.C. Sec. 1673(b).
8426	(3) (a) Within 15 days of receiving notice, an obligor may contest a payment schedule
8427	as inconsistent with Subsection (2) or the rules adopted by the office to establish payment
8428	schedules under Subsection (1) by filing a written request for an adjudicative proceeding.
8429	(b) For purposes of Subsection (3)(a), notice includes:
8430	(i) notice sent to the obligor by the office in accordance with Section 62A-11-304.4;
8431	(ii) participation by the obligor in the proceedings related to the establishment of the
8432	payment schedule; and
8433	(iii) receiving a paycheck in which a reduction has been made in accordance with a
8434	payment schedule established under Subsection (1).
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8436	[62A-11-320.5.] <u>26B-9-220.</u> Review and adjustment of child support order in
8437	three-year cycle Substantial change in circumstances not required.
8438	(1) If a child support order has not been issued, modified, or reviewed within the
8439	previous three years, the office shall review a child support order, taking into account the
8440	best interests of the child involved, if:
8441	(a) requested by a parent or legal guardian involved in a case receiving IV-D services;
8442	or
8443	(b) there has been an assignment under Section 35A-3-108 and the office determines
8444	that a review is appropriate.
8445	(2) If the office conducts a review under Subsection (1), the office shall determine if

there is a difference of 10% or more between the amount ordered and the amount that would

be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall:

- (a) with respect to a child support order issued or modified by the office, adjust the amount to that which is provided for in the guidelines; or
 - (b) with respect to a child support order issued or modified by a court, file a petition with the court to adjust the amount to that which is provided for in the guidelines.
 - (3) The office may use automated methods to:

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- (a) collect information and conduct reviews under Subsection (2); and
- (b) identify child support orders in which there is a difference of 10% or more between the amount of child support ordered and the amount that would be required under the child support guidelines for review under Subsection (1)(b).
- (4) (a) A parent or legal guardian who requests a review under Subsection (1)(a) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.
- (b) If the office conducts a review under Subsections (1)(b) and (3)(b), the office shall provide notice to the parties of:
 - (i) a proposed adjustment under Subsection (2)(a); or
 - (ii) a proposed petition to be filed in court under Subsection (2)(b).
- (5) (a) Within 30 days of notice being sent under Subsection (4)(a), a parent or legal guardian may respond to a request for review filed with the office.
- (b) Within 30 days of notice being sent under Subsection (4)(b), a parent or legal guardian may contest a proposed adjustment or petition by requesting a review under Subsection (1)(a) and providing documentation that refutes the adjustment or petition.
- (6) A showing of a substantial change in circumstances is not necessary for an adjustment under this section.

[62A-11-320.6.] <u>26B-9-221.</u> Review and adjustment of support order for substantial change in circumstances outside three-year cycle.

(1) (a) A parent or legal guardian involved in a case receiving IV-D services or the office, if there has been an assignment under Section 35A-3-108, may at any time request the office to review a child support order if there has been a substantial change in circumstances.

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	WORKING DRAFT I OR DISCUSSION I URPOSES ONLY
8479	(b) For purposes of Subsection (1)(a), a substantial change in circumstances may
8480	include:
8481	(i) material changes in custody;
8482	(ii) material changes in the relative wealth or assets of the parties;
8483	(iii) material changes of 30% or more in the income of a parent;
8484	(iv) material changes in the ability of a parent to earn;
8485	(v) material changes in the medical needs of the child; and
8486	(vi) material changes in the legal responsibilities of either parent for the support of
8487	others.
8488	(2) Upon receiving a request under Subsection (1), the office shall review the order,
8489	taking into account the best interests of the child involved, to determine whether the
8490	substantial change in circumstance has occurred, and if so, whether the change resulted in a
8491	difference of 15% or more between the amount of child support ordered and the amount that
8492	would be required under the child support guidelines. If there is such a difference and the
8493	difference is not of a temporary nature, the office shall:
8494	(a) with respect to a support order issued or modified by the office, adjust the amount
8495	in accordance with the guidelines; or
8496	(b) with respect to a support order issued or modified by a court, file a petition with the
8497	court to adjust the amount in accordance with the guidelines.
8498	(3) The office may use automated methods to collect information for a review
8499	conducted under Subsection (2).
8500	(4) (a) A parent or legal guardian who requests a review under Subsection (1) shall
8501	provide notice of the request to the other parent within five days and in accordance with
8502	Section 62A-11-304.4.
8503	(b) If the office initiates and conducts a review under Subsection (1), the office shall
8504	provide notice of the request to any parent or legal guardian within five days and in
8505	accordance with Section 62A-11-304.4.
8506	(5) Within 30 days of notice being sent under Subsection (4), a parent or legal
8507	guardian may file a response to a request for review with the office.
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[62A-11-320.7.] 26B-9-222. Three-year notice of opportunity to review.

(1) Once every three years, the office shall give notice to each parent or legal

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING DRAFT I OR DISCUSSION I URPOSES ONLY
8511	guardian involved in a case receiving IV-D services of the opportunity to request a review
8512	and, if appropriate, adjustment of a child support order under Sections 62A-11-320.5 and
8513	62A-11-320.6.
8514	(2) (a) The notice required by Subsection (1) may be included in an issued or
8515	modified order of support.
8516	(b) Notwithstanding Subsection (2)(a), the office shall comply with Subsection (1),
8517	three years after the date of the order issued or modified under Subsection (2)(a).
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8519	[62A-11-321.] <u>26B-9-223.</u> Posting bond or security for payment of support debt
8520	Procedure.
8521	(1) The office shall, or an obligee may, petition the court for an order requiring an
8522	obligor to post a bond or provide other security for the payment of a support debt, if the office
8523	or an obligee determines that action is appropriate, and if the payments are more than 90
8524	days delinquent. The office shall establish rules for determining when it shall seek an order
8525	for bond or other security.
8526	(2) When the office or an obligee petitions the court under this section, it shall give
8527	written notice to the obligor, stating:
8528	(a) the amount of support debt;
8529	(b) that it has petitioned the court for an order requiring the obligor to post security;
8530	and
8531	(c) that the obligor has the right to appear before the court and contest the office's or
8532	obligee's petition.
8533	(3) After notice to the obligor and an opportunity for a hearing, the court shall order a
8534	bond posted or other security to be deposited upon the office's or obligee's showing of a
8535	support debt and of a reasonable basis for the security.
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8537	[62A-11-326.] <u>26B-9-224.</u> Medical and dental expenses of dependent children.
8538	In any action under this part, the office and the department in their orders shall:
8539	(1) include a provision assigning responsibility for cash medical support:

(1) include a provision assigning responsibility for cash medical support;

- (2) include a provision requiring the purchase and maintenance of appropriate medical, hospital, and dental care insurance for those children, if:
 - (a) insurance coverage is or becomes available at a reasonable cost; and

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(3) include a designation of which health, dental or hospital insurance plan, is primary and which is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time the dependent children are covered by both parents' health, hospital, or dental insurance plans.

(b) the insurance coverage is accessible to the children; and

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[62A-11-326.1.] 26B-9-225. Enrollment of child in accident and health insurance plan -- Order -- Notice.

- (1) The office may issue a notice to existing and future employers or unions to enroll a dependent child in an accident and health insurance plan that is available through the dependent child's parent or legal guardian's employer or union, when the following conditions are satisfied:
- (a) the parent or legal guardian is already required to obtain insurance coverage for the child by a prior court or administrative order; and
 - (b) the parent or legal guardian has failed to provide written proof to the office that:
- (i) the child has been enrolled in an accident and health insurance plan in accordance with the court or administrative order; or
- (ii) the coverage required by the order was not available at group rates through the employer or union 30 or more days prior to the date of the mailing of the notice to enroll.
- (2) The office shall provide concurrent notice to the parent or legal guardian in accordance with Section 62A-11-304.4 of:
 - (a) the notice to enroll sent to the employer or union; and
- (b) the opportunity to contest the enrollment due to a mistake of fact by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.
- (3) A notice to enroll shall result in the enrollment of the child in the parent's accident and health insurance plan, unless the parent successfully contests the notice based on a mistake of fact.
- (4) A notice to enroll issued under this section may be considered a "qualified medical support order" for the purposes of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

[62A-11-326.2.] <u>26B-9-226.</u>	Compliance with order Enrollment of dependent
child for insurance.	

- (1) An employer or union shall comply with a notice to enroll issued by the office 8577 8578 under Section 62A-11-326.1 by enrolling the dependent child that is the subject of the notice in the: 8579
 - (a) accident and health insurance plan in which the parent or legal guardian is enrolled, if the plan satisfies the prior court or administrative order; or
 - (b) least expensive plan, assuming equivalent benefits, offered by the employer or union that complies with the prior court or administrative order which provides coverage that is reasonably accessible to the dependent child.
 - (2) The employer, union, or insurer may not refuse to enroll a dependent child pursuant to a notice to enroll because a parent or legal guardian has not signed an enrollment application.
 - (3) Upon enrollment of the dependent child, the employer shall deduct the appropriate premiums from the parent or legal quardian's wages and remit them directly to the insurer.
 - (4) The insurer shall provide proof of insurance to the office upon request.
 - (5) The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing any insurance reimbursement claim.

[62A-11-326.3.] 26B-9-227. Determination of parental liability.

- (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the office may determine by order the amount of a parent's liability for uninsured medical, hospital, and dental expenses of a dependent child, when the parent:
 - (a) is required by a prior court or administrative order to:
 - (i) share those expenses with the other parent of the dependent child; or
 - (ii) obtain medical, hospital, or dental care insurance but fails to do so; or
- 8601 (b) receives direct payment from an insurer under insurance coverage obtained after 8602 the prior court or administrative order was issued.
 - (2) If the prior court or administrative order does not specify what proportions of the expenses are to be shared, the office may determine the amount of liability in accordance with established rules.
 - (3) This section applies to an order without regard to when it was issued.

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8607	[62A-11-327.] <u>26B-9-228.</u> Reporting past-due support to consumer reporting
8608	agency.
8609	The office shall periodically report the name of any obligor who is delinquent in the
8610	payment of support and the amount of overdue support owed by the obligor to consumer
8611	reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a(f):
8612	(1) only after the obligor has been afforded notice and a reasonable opportunity to
8613	contest the accuracy of the information; and
8614	(2) only to an entity that has provided satisfactory evidence that it is a consumer
8615	reporting agency under 15 U.S.C. Sec. 1681a(f).
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8617	[62A-11-328.] 26B-9-229. Information received from State Tax Commission
8618	provided to other states' child support collection agencies.
8619	The office shall, upon request, provide to any other state's child support collection
8620	agency the information which it receives from the State Tax Commission under Subsection
8621	59-1-403(4)(I), with regard to a support debt which that agency is involved in enforcing.
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8623	[62A-11-333.] <u>26B-9-230.</u> Right to judicial review.
8624	(1) (a) Within 30 days of notice of any administrative action on the part of the office to
8625	establish paternity or establish, modify or enforce a child support order, the obligor may file a
8626	petition for de novo review with the district court.
8627	(b) For purposes of Subsection (1)(a), notice includes:
8628	(i) notice actually received by the obligor in accordance with Section 62A-11-304.4;
8629	(ii) participation by the obligor in the proceedings related to the establishment of the
8630	paternity or the modification or enforcement of child support; or
8631	(iii) receiving a paycheck in which a reduction has been made for child support.
8632	(2) The petition shall name the office and all other appropriate parties as respondents
8633	and meet the form requirements specified in Section 63G-4-402.
8634	(3) A copy of the petition shall be served upon the Child and Family Support Division
8635	of the Office of Attorney General.
8636	(4) (a) If the petition is regarding the amount of the child support obligation
8637	established in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court may

issue a temporary order for child support until a final order is issued.

- (b) The petitioner may file an affidavit stating the amount of child support reasonably 8639 believed to be due and the court may issue a temporary order for that amount. The 8640 temporary order shall be valid for 60 days, unless extended by the court while the action is 8641 8642 being pursued. 8643
 - (c) If the court upholds the amount of support established in Subsection (4)(a), the petitioner shall be ordered to make up the difference between the amount originally ordered in Subsection (4)(a) and the amount temporarily ordered under Subsection (4)(b).
 - (d) This Subsection (4) does not apply to an action for the court-ordered modification of a judicial child support order.
 - (5) The court may, on its own initiative and based on the evidence before it, determine whether the petitioner violated U.R. Civ. P. Rule 11 by filing the action. If the court determines that U.R.Civ.P. Rule 11 was violated, it shall, at a minimum, award to the office attorney fees and costs for the action.
 - (6) Nothing in this section precludes the obligor from seeking administrative remedies as provided in this chapter.

[62A-11-334.] 26B-9-231. Reporting past-due support for criminal prosecution.

- (1) (a) Upon request from an official described in Subsection (1)(b), the office shall report the name of an obligor who is over \$10,000 delinquent in the payment of support and the amount of overdue support owed by the obligor to an obligee.
 - (b) The following officials may request the information described in Subsection (1)(a):
 - (i) the attorney general;

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- (ii) a county attorney in whose jurisdiction the obligor's obligee resides; or
- (iii) a district attorney in whose jurisdiction the obligor's obligee resides.
- (2) The office shall make the report described in Subsection (1) no later than 30 days 8663 8664 after the day on which the office receives the request for information.

Part 3. Income Withholding in Child Support Cases.

[62A-11-401.] 26B-9-301. Definitions.

8669 As used in this part[, Part 5, Income Withholding in Non IV-D Cases, and Part 7,

8670 Electronic Funds Transfer]:

- (1) "Business day" means a day on which state offices are open for regular business.
- 8672 (2) "Child" is defined in Section 62A-11-303.

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- (3) "Child support" means a base child support award as defined in Section
 78B-12-102, or a financial award for uninsured monthly medical expenses, ordered by a
 tribunal for the support of a child, including current periodic payments, all arrearages which
 accrue under an order for current periodic payments, and sum certain judgments awarded for
 arrearages, medical expenses, and child care costs. Child support includes obligations
 ordered by a tribunal for the support of a spouse or former spouse with whom the child
 resides if the spousal support is collected with the child support.
 - (4) "Child support order" or "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a tribunal for child support and related costs and fees, interest and penalties, income withholding, attorney fees, and other relief.
 - (5) "Child support services" is defined in Section 62A-11-103.
 - (6) "Delinquent" or "delinquency" means that child support in an amount at least equal to current child support payable for one month is overdue.
 - (7) "Immediate income withholding" means income withholding without regard to whether a delinquency has occurred.
 - (8) "Income" is defined in Section 62A-11-103.
 - (9) "Jurisdiction" means a state or political subdivision of the United States, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, an Indian tribe or tribal organization, or any comparable foreign nation or political subdivision.
 - (10) "Obligee" is defined in Section 62A-11-303.
 - (11) "Obligor" is defined in Section 62A-11-303.
 - (12) "Office" is defined in Section 62A-11-103.
- 8697 (13) "Payor" means an employer or any person who is a source of income to an obligor.

8700 [62A-11-402.] <u>26B-9-302.</u> Administrative procedures.

Because the procedures of this part are mandated by federal law they shall be applied for the purposes specified in this part and control over any other statutory administrative

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[62A-11-403.] 26B-9-303. Provision for income withholding in child support order -- Immediate income withholding.

- (1) Whenever a child support order is issued or modified in this state the obligor's income is subject to immediate income withholding for the child support described in the order in accordance with the provisions of this chapter, unless:
- (a) the court or administrative body which entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or
- (b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.
- (2) In every child support order issued or modified on or after January 1, 1994, the court or administrative body shall include a provision that the income of an obligor is subject to immediate income withholding in accordance with this chapter. If for any reason other than the provisions of Subsection (1) that provision is not included in the child support order the obligor's income is nevertheless subject to immediate income withholding.
- (3) In determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:
- (a) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;
- (b) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or
- (c) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.

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[62A-11-404.] 26B-9-304. Office procedures for income withholding for orders issued or modified on or after October 13, 1990.

(1) With regard to obligees or obligors who are receiving IV-D services, each child support order issued or modified on or after October 13, 1990, subjects the income of an

obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:

- (a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause not to require immediate income withholding; or
- (b) a written agreement that provides an alternative arrangement is executed by the obligor and obligee, and by the office, if there is an assignment under Section 35A-3-108, and reviewed and entered in the record by the court or administrative body.
 - (2) For purposes of this section:

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- (a) "good cause" shall be based on, at a minimum:
- (i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and
 - (ii) proof of timely payment of any previously ordered support;
- (b) in determining "good cause," the court or administrative body may, in addition to any other requirement that it determines appropriate, consider whether the obligor has:
- (i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and
- (ii) arranged to deposit all child support payments into a checking account belonging to the obligee or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained.
 - (3) An exception from immediate income withholding shall be:
 - (a) included in the court or administrative agency's child support order; and
 - (b) negated without further administrative or judicial action:
- 8758 (i) upon a delinquency;
- 8759 (ii) upon the obligor's request; or
 - (iii) if the office, based on internal procedures and standards, or a party requests immediate income withholding for a case in which the parties have entered into an alternative arrangement to immediate income withholding pursuant to Subsection (1)(b).
 - (4) If an exception to immediate income withholding has been ordered on the basis of good cause under Subsection (1)(a), the office may commence income withholding under this part:
 - (a) in accordance with Subsection (3)(b); or

- 8767 (b) if the administrative or judicial body that found good cause determines that circumstances no longer support that finding.
- (5) (a) A party may contest income withholding due to a mistake of fact by filing a written objection with the office within 15 days of the commencement of income withholding under Subsection (4).
 - (b) If a party contests income withholding under Subsection (5)(a), the office shall proceed with the objection as it would an objection filed under Section 62A-11-405.
- 8774 (6) Income withholding implemented under this section is subject to termination under 8775 Section 62A-11-408.
 - (7) (a) Income withholding under the order may be effective until the obligor no longer owes child support to the obligee.
 - (b) Appropriate income withholding procedures apply to existing and future payors and all withheld income shall be submitted to the office.

[62A-11-405.] 26B-9-305. Office procedures for income withholding for orders issued or modified before October 13, 1990.

- (1) With regard to child support orders issued prior to October 13, 1990, and not otherwise modified after that date, and for which an obligor or obligee is receiving IV-D services, the office shall proceed to withhold income as a means of collecting child support if a delinquency occurs under the order, regardless of whether the relevant child support order includes authorization for income withholding.
- (2) Upon receipt of a verified statement or affidavit alleging that a delinquency has occurred, the office shall:
- 8790 (a) send notice to the payor for income withholding in accordance with Section 8791 62A-11-406; and
 - (b) send notice to the obligor under Section 62A-11-304.4 that includes:
 - (i) a copy of the notice sent to the payor; and
- 8794 (ii) information regarding:

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- (A) the commencement of income withholding; and
- 8796 (B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing a written request for review under this section with the office within 15 days.
 - (3) If the obligor contests the withholding, the office shall:

- 8799 (a) provide an opportunity for the obligor to provide documentation and, if necessary, 8800 to present evidence supporting the obligor's claim of mistake of fact;
 - (b) decide whether income withholding shall continue;

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- 8802 (c) notify the obligor of its decision and the obligor's right to appeal under Subsection 8803 (4); and
 - (d) at the obligor's option, return, if in the office's possession, or credit toward the most current and future support obligations of the obligor any amount mistakenly withheld and, if the mistake is attributable to the office, interest at the legal rate.
 - (4) (a) An obligor may appeal the office's decision to withhold income under Subsection (3) by filing an appeal with the district court within 30 days after service of the notice under Subsection (3) and immediately notifying the office in writing of the obligor's decision to appeal.
 - (b) The office shall proceed with income withholding under this part during the appeal, but shall hold all funds it receives, except current child support, in a reserve account pending the court's decision on appeal. The funds, plus interest at the legal rate, shall be paid to the party determined by the court.
 - (c) If an obligor appeals a decision of the office to a district court under Subsection (4)(a), the obligor shall provide to the obligee:
 - (i) notice of the obligor's appeal; and
 - (ii) a copy of any documents filed by the obligor upon the office in connection with the appeal.
 - (5) An obligor's payment of overdue child support may not be the sole basis for not implementing income withholding in accordance with this part.

[62A-11-406.] <u>26B-9-306.</u> Notice to payor.

Upon compliance with the applicable provisions of this part the office shall mail or deliver to each payor at the payor's last-known address written notice stating:

- (1) the amount of child support to be withheld from income;
- (2) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount permitted under Section 303 (b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);
 - (3) that the payor must mail or deliver the withheld income to the office within seven

business days of the date the amount would have been paid or credited to the employee but for this section;

- (4) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);
- (5) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;
- (6) (a) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (3), the payor is liable to the office for a late fee of \$50 or 10% of the withheld income, whichever is greater, for each payment that is late, per obligor; and
- (b) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the office for \$1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;
 - (7) that the notice to withhold is prior to any other legal process under state law;
- (8) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;
- (9) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;
- (10) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316, and to the office for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld, plus interest on that amount; and
- (11) that, in addition to any other remedy provided in this section, the payor is liable for costs and reasonable attorneys' fees incurred in enforcing any provision in a notice to withhold mailed or delivered to the payor's last-known address.

[62A-11-407.] 26B-9-307. Payor's procedures for income withholding.

- 8863 (1) (a) A payor is subject to the requirements, penalties, and effects of a notice 8864 served on the payor under Section 62A-11-406.
 - (b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-406(3).
 - (2) (a) If a payor fails to comply with a notice served upon him under Section 62A-11-406, the office, the obligee, if an assignment has not been made under Section 35A-7-108, or the obligor may proceed with a civil action against the payor to enforce a provision of the notice.
 - (b) In addition to a civil action under Subsection (2)(a), the office may bring an administrative action pursuant to Title 63G, Chapter 4, Administrative Procedures Act, to enforce a provision of the notice.
 - (c) If an obligee or obligor brings a civil action under Subsection (2)(a) to enforce a provision of the notice, the obligee or obligor may recover any penalty related to that provision under Section 62A-11-406 in place of the office.
 - (3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.
 - (4) A payor may combine amounts which the payor has withheld from the incomes of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.
 - (5) In addition to any other remedy provided in this section, a payor is liable to the office, obligee, or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in the notice mailed or delivered under Section 62A-11-406.
 - (6) Notwithstanding this section or Section 62A-11-406, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of employment in determining:
 - (a) the payor's fee for processing income withholding;
 - (b) the maximum amount permitted to be withheld from the obligor's income;
 - (c) the time periods within which the payor must implement income withholding and forward child support payments;

	WORKING DRAFT TOR DISCUSSION FOR POSES ONLY
8895	(d) the priorities for withholding and allocating withheld income for multiple child
8896	support obligees; and
8897	(e) any term or condition for withholding not specified in the notice.
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8899	[62A-11-408.] <u>26B-9-308.</u> Termination of income withholding.
8900	(1) (a) At any time after the date income withholding begins, a party to the child
8901	support order may request a judicial hearing or administrative review to determine whether
8902	income withholding should be terminated due to:
8903	(i) good cause under Section 62A-11-404;
8904	(ii) the execution of a written agreement under Section 62A-11-404; or
8905	(iii) the completion of an obligor's support obligation.
8906	(b) An obligor's payment of overdue child support may not be the sole basis for
8907	termination of income withholding.
8908	(c) If it is determined by a court or the office that income withholding should be
8909	terminated, the office shall give written notice of termination to each payor within 10 days
8910	after receipt of notice of that decision.
8911	(d) If, after termination of income withholding by court or administrative order, an
8912	obligor's child support obligation becomes delinquent or subject to immediate and automatic
8913	income withholding under Section 62A-11-404, the office shall reinstate income withholding
8914	procedures in accordance with the provisions of this part.
8915	(e) If the office terminates income withholding through an agreement with a party, the
8916	office may reinstate income withholding if:
8917	(i) a delinquency occurs;
8918	(ii) the obligor requests reinstatement;
8919	(iii) the obligee requests reinstatement; or
8920	(iv) the office, based on internal procedures and standards, determines reinstatement
8921	is appropriate.

(2) The office shall give written notice of termination to each payor when the obligor no longer owes child support to the obligee.

(3) A notice to withhold income, served by the office, is binding on a payor until the office notifies the payor that the obligation to withhold income has been terminated.

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[62A-11-409.] 26B-9-309. Payor's compliance with income withholding.

- (1) Payment by a payor under this part satisfies the terms for payment of income under any contract between a payor and obligor.
- (2) A payor who complies with an income withholding notice that is regular on its face may not be subject to civil liability to any person for conduct in compliance with the notice.

[62A-11-410.] 26B-9-310. Violations by payor. 8933

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- (1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold served by the office under this part, or because of a notice or order served by an obligee in a civil action for income withholding.
- (2) If the payor violates Subsection (1), that payor is liable to the office, or to the obligee seeking income withholding in a civil action, for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which he should have withheld, plus interest on that amount and costs incurred in collection of the amount from the payor, including a reasonable attorney's fee.

[62A-11-411.] 26B-9-311. Priority of notice or order to withhold income.

The notice to withhold provided by Section 62A-11-406, and a notice or order to withhold issued by the court in a civil action for income withholding, are prior to all other legal collection processes provided by state law, including garnishment, attachment, execution, and wage assignment.

[62A-11-413.] 26B-9-312. Records and documentation -- Distribution or refund of collected income -- Allocation of payments among multiple notices to withhold.

- (1) The office shall keep adequate records to document and monitor all child support payments received under this part.
- (2) The office shall promptly distribute child support payments which it receives from a payor, to the obligee, unless those payments are owed to the department.
 - (3) The office shall promptly refund any improperly withheld income to the obligor.
- (4) The office may allocate child support payments received from an obligor under this part among multiple notices to withhold which it has issued with regard to that obligor, in accordance with rules promulgated by the office to govern that procedure.

8959 [62A-11-414.] 26B-9-313. Income withholding upon obligor's request.

Whether or not a delinquency has occurred, an obligor may request that the office implement income withholding procedures under this part for payment of his child support obligations.

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[62A-11-501.] <u>26B-9-350.</u> [Definitions --] Application <u>of Sections 26B-8-350</u> through 26B-8-360 -- Non IV-D cases .

- [(1)-] The requirements of [this part] <u>Sections 26B-8-350 through 26B-8-360</u> apply only to cases in which neither the obligee nor the obligor is receiving IV-D services.
 - [(2) For purposes of this part the definitions contained in Section 62A-11-401 apply.]

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[62A-11-502.] 26B-9-351. Child support orders issued or modified on or after January 1, 1994 -- Immediate income withholding.

- (1) With regard to obligees or obligors who are not receiving IV-D services, each child support order issued or modified on or after January 1, 1994, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:
- (a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or
- (b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.
 - (2) For purposes of this section:
- (a) an action on or after January 1, 1994, to reduce child support arrears to judgment, without a corresponding establishment of or modification to a base child support amount, is not sufficient to trigger immediate income withholding;
 - (b) "good cause" shall be based on, at a minimum:
- (i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and
 - (ii) proof of timely payment of any previously ordered support;
- 8989 (c) in determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:

- (i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;
 - (ii) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or
 - (iii) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.
 - (3) In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required, in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:
 - (a) the date payment of child support becomes delinquent;
 - (b) the date the obligor requests;

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- (c) the date the obligee requests if a written agreement under Subsection (1)(b) exists; or
 - (d) the date the court or administrative body so modifies that order.
- (4) The court shall include in every child support order issued or modified on or after January 1, 1994, a provision that the income of an obligor is subject to income withholding in accordance with this chapter; however, if for any reason that provision is not included in the child support order, the obligor's income is nevertheless subject to income withholding.
- (5) (a) In any action to establish or modify a child support order after July 1, 1997, the court, upon request by the obligee or obligor, shall commence immediate income withholding by ordering the clerk of the court or the requesting party to:
- (i) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506; and
- (ii) mail a copy of the written notice sent to the payor under Subsection (5)(a)(i) and a copy of the support order to the office.
- (b) If neither the obligee nor obligor requests commencement of income withholding under Subsection (5)(a), the court shall include in the order to establish or modify child support a provision that the obligor or obligee may commence income withholding by:
 - (i) applying for IV-D services with the office; or

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9023	(ii) filing an ex parte motion with a district court of competent jurisdiction pursuant to
9024	Section 62A-11-504.
9025	(c) A payor who receives written notice under Subsection (5)(a)(i) shall comply with
9026	the requirements of Section 62A-11-507.
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9028	[62A-11-503.] <u>26B-9-352.</u> Requirement of employment and location
9029	information.
9030	(1) As of July 1, 1997, a court, before issuing or modifying an order of support, shall
9031	require the parties to file the information required under Section 62A-11-304.4.
9032	(2) If a party fails to provide the information required by Section 62A-11-304.4, the
9033	court shall issue or modify an order upon receipt of a verified representation of employment
9034	or source of income for that party based on the best evidence available if:
9035	(a) that party has participated in the current proceeding;
9036	(b) the notice and service of process requirements of the Utah Rules of Civil
9037	Procedure have been met if the case is before the court to establish an original order of
9038	support; or
9039	(c) the notice requirements of Section 62A-11-304.4 have been met if the case is
9040	before the court to modify an existing order.
9041	(3) A court may restrict the disclosure of information required by Section
9042	62A-11-304.4:
9043	(a) in accordance with a protective order involving the parties; or
9044	(b) if the court has reason to believe that the release of information may result in
9045	physical or emotional harm by one party to the other party.
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9047	[62A-11-504.] <u>26B-9-353.</u> Procedures for commencing income withholding.
9048	(1) If income withholding has not been commenced in connection with a child support
9049	order, an obligee or obligor may commence income withholding by:
9050	(a) applying for IV-D services from the office; or

- (b) filing an ex parte motion for income withholding with a district court of competent jurisdiction.
- (2) The office shall commence income withholding in accordance with Part 4, Income Withholding in IV-D Cases, upon receipt of an application for IV-D services under Subsection

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- 9056 (3) A court shall grant an ex parte motion to commence income withholding filed 9057 under Subsection (1)(b) regardless of whether the child support order provided for income 9058 withholding, if the obligee provides competent evidence showing:
 - (a) the child support order was issued or modified after January 1, 1994, and the obligee or obligor expresses a desire to commence income withholding;
- 9061 (b) the child support order was issued or modified after January 1, 1994, and the order contains a good cause exception to income withholding as provided for in Section 62A-11-502, and a delinquency has occurred; or
- 9064 (c) the child support order was issued or modified before January 1, 1994, and a delinquency has occurred.
- 9066 (4) If a court grants an ex parte motion under Subsection (3), the court shall order the clerk of the court or the requesting party to:
 - (a) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506;
- 9070 (b) mail a copy of the written notice sent to the payor under Subsection (4)(a) to the 9071 nonrequesting party's address and a copy of the support order and the notice to the payor to 9072 the office; and
- 9073 (c) if the obligee is the requesting party, send notice to the obligor under Section 9074 62A-11-304.4 that includes:
 - (i) a copy of the notice sent to the payor; and
- 9076 (ii) information regarding:
 - (A) the commencement of income withholding; and
- 9078 (B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing an objection with the court within 20 days.
- 9080 (5) A payor who receives written notice under Subsection (4)(a) shall comply with the requirements of Section 62A-11-507.
 - (6) If an obligor contests withholding, the court shall:
- 9083 (a) provide an opportunity for the obligor to present evidence supporting his claim of a 9084 mistake of fact;
 - (b) decide whether income withholding should continue;
- 9086 (c) notify the parties of the decision; and

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9087	(d) at the obligor's option, return or credit toward the most current and future support
9088	payments of the obligor any amount mistakenly withheld plus interest at the legal rate.
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9090	[62A-11-505.] <u>26B-9-354.</u> Responsibilities of the office.
9091	The office shall document and distribute payments in the manner provided for and in
9092	the time required by Section 62A-11-413 and federal law upon receipt of:
9093	(1) a copy of the written notice sent to the payor under Section 62A-11-502 or Section
9094	62A-11-504;
9095	(2) the order of support;
9096	(3) the obligee's address; and
9097	(4) withheld income from the payor.
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9099	[62A-11-506.] <u>26B-9-355.</u> Notice to payor.
9100	(1) A notice mailed or delivered to a payor under this part shall state in writing:
9101	(a) the amount of child support to be withheld from income;
9102	(b) that the child support must be withheld from the obligor's income each time the
9103	obligor is paid, but that the amount withheld may not exceed the maximum amount permitted
9104	under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
9105	(c) that the payor must mail or deliver the withheld income to the office within seven
9106	business days of the date the amount would have been paid or credited to the employee but
9107	for this section;
9108	(d) that the payor may deduct from the obligor's income an additional amount which is
9109	equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil
9110	Procedure, as the payor's fee for administrative costs, but the total amount withheld may not
9111	exceed the maximum amount permitted under Section 303(b) of the Consumer Credit
9112	Protection Act, 15 U.S.C. Section 1673(b);
9113	(e) that the notice to withhold is binding on the payor and on any future payor until
9114	further notice by the office or a court;
9115	(f) (i) that if the payor fails to mail or deliver withheld income to the office within the
9116	time period set in Subsection (1)(c), the payor is liable to the obligee for a late fee of \$50 or

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(ii) that if the payor willfully fails to withhold income in accordance with the notice, the

10% of the withheld income, whichever is greater, for each payment that is late; and

payor is liable to the obligee for \$1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;

- (g) that the notice to withhold is prior to any other legal process under state law;
- (h) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice:
 - (i) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;
 - (j) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld plus interest on that amount; and
 - (k) that, in addition to any other remedy provided in this section, the payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in a notice to withhold mailed or delivered under Section 62A-11-502 or 62A-11-504.
 - (2) If the obligor's employment with a payor is terminated, the office shall, if known and if contacted by the obligee, inform the obligee of:
 - (a) the obligor's last-known address; and
 - (b) the name and address of any new payor.

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- [62A-11-507.] 26B-9-356. Payor's procedures for income withholding.
- (1) (a) A payor is subject to the requirements, penalties, and effects of a notice mailed or delivered to him under Section 62A-11-506.
- (b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-506(1)(c).
- 9148 (2) If a payor fails to comply with the requirements of a notice served upon him under 9149 Section 62A-11-506, the obligee, or obligor may proceed with a civil action against the payor 9150 to enforce a provision of the notice.

- 9151 (3) If the obligor's child support is owed monthly and the payor's pay periods are at
 9152 more frequent intervals, the payor, with the consent of the office or obligee, may withhold an
 9153 equal amount at each pay period cumulatively sufficient to pay the monthly child support
 9154 obligation.
 - (4) A payor may combine amounts which he has withheld from the income of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.
 - (5) In addition to any other remedy provided in this section, a payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision of the notice mailed or delivered under Section 62A-11-506.
 - (6) Notwithstanding this section or Section 62A-11-506, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of business in determining:
 - (a) the payor's fee for processing income withholding;
 - (b) the maximum amount permitted to be withheld from the obligor's income;
 - (c) the time periods within which the payor must implement income withholding and forward child support payments;
 - (d) the priorities for withholding and allocating withheld income for multiple child support obligees; and
 - (e) any terms or conditions for withholding not specified in the notice.

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[62A-11-508.] 26B-9-357. Termination of income withholding.

- (1) (a) At any time after the date income withholding begins, a party to the child support order may request a court to determine whether income withholding should be terminated due to:
 - (i) good cause under Section 62A-11-502; or
 - (ii) the completion of an obligor's support obligation.
- 9179 (b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
- 9181 (c) After termination of income withholding under this section, a party may seek 9182 reinstatement of income withholding under Section 62A-11-504.

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9183	(2) (a) If it is determined that income withholding should be terminated under
9184	Subsection (1)(a)(i), the court shall order written notice of termination be given to each payor
9185	within 10 days after receipt of notice of that decision.
9186	(b) The obligee shall give written notice of termination to each payor:
9187	(i) when the obligor no longer owes child support to the obligee; or
9188	(ii) if the obligee and obligor enter into a written agreement that provides an
9189	alternative arrangement, which may be filed with the court.
9190	(3) A notice to withhold income is binding on a payor until the court or the obligee
9191	notifies the payor that his obligation to withhold income has been terminated.
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9193	[62A-11-509.] <u>26B-9-358.</u> Payor's compliance with income withholding.
9194	(1) Payment by a payor under this part satisfies the terms for payment of income
9195	under any contract between a payor and obligor.
9196	(2) A payor who complies with an income withholding notice that is regular on its face
9197	may not be subject to civil liability to any person for conduct in compliance with the notice.
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9199	[62A-11-510.] <u>26B-9-359.</u> Violations by payor.
9200	(1) A payor may not discharge, refuse to hire, or discipline any obligor because of a
9201	notice to withhold under this part.
9202	(2) If a payor violates Subsection (1), the payor is liable to the obligor as provided in
9203	Section 62A-11-316 and the obligee for the greater of \$1,000 or the amount of child support
9204	accumulated to the date of discharge which should have been withheld plus interest on that
9205	amount and costs incurred in collecting the amount, including reasonable attorneys' fees.
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9207	[62A-11-511.] 26B-9-360. Priority of notice or order to withhold income.
9208	The notice to withhold under this part is prior to all other legal collection processes

The notice to withhold under this part is prior to all other legal collection processes provided by state law, including garnishment, attachment, execution, and wage assignment.

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Part 4. Enforcement of Child Support Orders.

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[62A-11-602.] <u>26B-9-401.</u> Definitions.

9214 As used in this part:

9215	(1) "Account" means the same as that term is defined in Section 62A-11-103
9216	[(1)] <u>(2)</u> "Child support" is as defined in Section 62A-11-401.
9217	[(2)] (3) "Delinquent on a child support obligation" means that a person:
9218	(a) (i) made no payment for 60 days on a current child support obligation as set forth
9219	in an administrative or court order;
9220	(ii) after the 60-day period described in Subsection (2)(a)(i), failed to make a good
9221	faith effort under the circumstances to make payment on the child support obligation in
9222	accordance with the order; and
9223	(iii) has not obtained a judicial order staying enforcement of the person's child support
9224	obligation, or the amount in arrears; or
9225	(b) (i) made no payment for 60 days on an arrearage obligation of child support as se-
9226	forth in:
9227	(A) a payment schedule;
9228	(B) a written agreement with the office; or
9229	(C) an administrative or judicial order;
9230	(ii) after the 60-day period described in Subsection (2)(b)(i), failed to make a good
9231	faith effort under the circumstances to make payment on the child support obligation in
9232	accordance with the payment schedule, agreement, or order; and
9233	(iii) has not obtained a judicial order staying enforcement of the person's child support
9234	obligation, or the amount in arrears.
9235	[(3)] (4) "Driver license" means a license, as defined in Section 53-3-102.
9236	[(4)] <u>(5)</u> "Driver License Division" means the Driver License Division of the
9237	Department of Public Safety created in Section 53-3-103.
9238	[(5)] (6) "Office" means the Office of Recovery Services created in Section
9239	62A-11-102.
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9241	[62A-11-603.] <u>26B-9-402.</u> Suspension of driver license for child support
9242	delinquency Reinstatement.
9243	(1) Subject to the provisions of this section, the office may order the suspension of a
9244	person's driver license if the person is delinquent on a child support obligation.
9245	(2) Before ordering a suspension of a person's driver license, the office shall serve

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the person with a "notice of intent to suspend driver license."

(3) The notice described in Subsection (2) shall: 9247 9248 (a) be personally served or served by certified mail; (b) except as otherwise provided in this section, comply with Title 63G, Chapter 4, 9249 9250 Administrative Procedures Act: 9251 (c) state the amount that the person is in arrears on the person's child support obligation; and 9252 9253 (d) state that, if the person desires to contest the suspension of the person's driver 9254 license, the person must request an informal adjudicative proceeding with the office within 30 9255 days after the day on which the notice is mailed or personally served. 9256 (4) (a) The office shall hold an informal adjudicative proceeding to determine whether a person's driver license should be suspended if the person requests a hearing within 30 9257 9258 days after the day on which the notice described in Subsection (2) is mailed or personally 9259 served on the person. 9260 (b) The informal adjudicative proceeding described in Subsection (4)(a), and any 9261 appeal of the decision rendered in that proceeding, shall comply with Title 63G, Chapter 4, 9262 Administrative Procedures Act. (5) Except as provided in Subsection (6), the office may order that a person's driver 9263 9264 license be suspended: (a) if, after the notice described in Subsection (2) is mailed or personally served, the 9265 9266 person fails to request an informal adjudicative proceeding within the time period described in 9267 Subsection (4)(a); or 9268 (b) following the informal adjudicative proceeding described in Subsection (4)(a), if: 9269 (i) the presiding officer finds that the person is delinquent on a child support 9270 obligation; and 9271 (ii) the finding described in Subsection (5)(b)(i): 9272 (A) is not timely appealed; or 9273 (B) is upheld after a timely appeal becomes final. (6) The office may not order the suspension of a person's driver license if the person: 9274 9275 (a) pays the full amount that the person is in arrears on the person's child support 9276 obligation;

(b) subject to Subsection (8):

(i) enters into a payment agreement with the office for the payment of the person's

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- 9279 current child support obligation and all arrears; and
- 9280 (ii) complies with the agreement described in Subsection (6)(b)(i) for any initial compliance period required by the agreement;
- 9282 (c) obtains a judicial order staying enforcement of the person's child support obligation or the amount in arrears; or
 - (d) is not currently delinquent on a child support obligation.
- 9285 (7) The office shall rescind an order made by the office to suspend a driver license if 9286 the person:
- 9287 (a) pays the full amount that the person is in arrears on the person's child support obligation;
 - (b) subject to Subsection (8):

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- (i) enters into a payment agreement with the office for the payment of the person's current child support obligation and all arrears; and
- (ii) complies with the agreement described in Subsection (7)(b)(i) for any initial compliance period required by the agreement;
- (c) obtains a judicial order staying enforcement of the person's child support obligation or the amount in arrears; or
 - (d) is not currently delinquent on a child support obligation.
- (8) For purposes of Subsections (6)(b) and (7)(b), the office shall diligently strive to enter into a fair and reasonable payment agreement that takes into account the person's employment and financial ability to make payments, provided that there is a reasonable basis to believe that the person will comply with the agreement.
- (9) (a) If, after the office seeks to suspend a person's driver license under this section, it is determined that the person is not delinquent, the office shall refund to the person any noncustodial parent income withholding fee that was collected from the person during the erroneously alleged delinquency.
- (b) Subsection (9)(a) does not apply if the person described in Subsection (9)(a) is otherwise in arrears on a child support obligation.
- (10) (a) A person whose driver license is ordered suspended pursuant to this section may file a request with the office, on a form provided by the office, to have the office rescind the order of suspension if:
 - (i) the person claims that, since the time of the suspension, circumstances have

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9311	changed such that the person is entitled to have the order of suspension rescinded under
9312	Subsection (7); and
9313	(ii) the office has not rescinded the order of suspension.
9314	(b) The office shall respond, in writing, to a person described in Subsection (10),
9315	within 10 days after the day on which the request is filed with the office, stating whether the
9316	person is entitled to have the order of suspension rescinded.
9317	(c) If the office determines, under Subsection (10)(b), that an order to suspend a
9318	person's license should be rescinded, the office shall immediately rescind the order.
9319	(d) If the office determines, under Subsection (10)(b), that an order to suspend a
9320	person's license should not be rescinded:
9321	(i) the office shall, as part of the response described in Subsection (10)(b), notify the
9322	person, in writing, of the reasons for that determination; and
9323	(ii) the person described in this Subsection (10)(d) may, within 15 days after the day
9324	on which the office sends the response described in Subsection (10)(b), appeal the
9325	determination of the office to district court.
9326	(e) The office may not require that a person file the request described in Subsection
9327	(10)(a) before the office orders that an order of suspension is rescinded, if the office has
9328	already determined that the order of suspension should be rescinded under Subsection (7).
9329	(11) The office may make rules, in accordance with Title 63G, Chapter 3, Utah
9330	Administrative Rulemaking Act, to:
9331	(a) implement the provisions of this part; and
9332	(b) determine when the arrears described in Subsections (6) and (7) are considered
9333	paid.

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[62A-11-604.] 26B-9-403. Notification of order to suspend or rescission of order.

- 9337 (1) When, pursuant to this part, the office orders the suspension of a person's driver 9338 license, or rescinds an order suspending a person's driver license, the office shall, within five 9339 business days after the day on which the order or rescission is made, notify:
 - (a) the Driver License Division; and
 - (b) the person to whom the order or rescission applies.
 - (2) (a) The notification described in Subsections (1)(a) and (b) shall include the name

9343	and identifying information of the person described in Subsection (1).
9344	(b) The notification to a person described in Subsection (1)(b) shall include a
9345	statement indicating that the person must reinstate the person's driver license with the Driver
9346	License Division before driving a motor vehicle.

and identifying information of the person described in Subsection (1)

License Division before driving a motor vehicle.

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[62A-11-703.] 26B-9-404. Alternative payment by obligor through electronic 9349 9350 funds transfer.

- (1) The office may enter into a written alternative payment agreement with an obligor which provides for electronic payment of child support under Part 4, Income Withholding in IV-D Cases, or Part 5, Income Withholding in Non IV-D Cases. Electronic payment shall be accomplished through an automatic withdrawal from the obligor's account at a financial institution.
 - (2) The alternative payment agreement shall:
 - (a) provide for electronic payment of child support in lieu of income withholding:
- (b) specify the date on which electronic payments will be withdrawn from an obligor's account; and
 - (c) specify the amount which will be withdrawn.
- (3) The office may terminate the agreement and initiate immediate income withholding if:
 - (a) required to meet federal or state requirements or guidelines;
- (b) funds available in the account at the scheduled time of withdrawal are insufficient to satisfy the agreement; or
 - (c) requested by the obligor.
- (4) If the payment amount requires adjusting, the office may initiate a new written agreement with the obligor. If, for any reason, the office and obligor fail to agree on the terms, the office may terminate the agreement and initiate income withholding.
- (5) If an agreement is terminated for insufficient funds, a new agreement may not be entered into between the office and obligor for a period of at least 12 months.
- 9372 (6) The office shall make rules specifying eligibility requirements for obligors to enter 9373 into alternative payment agreements.

9375	[62A-11-704.] <u>26B-9-405.</u> Mandatory distribution to obligee through electronic
9376	funds transfer.
9377	(1) Notwithstanding any provision of this chapter to the contrary, the office shall,
9378	except as provided in Subsection (3), distribute child support payments, under Subsection
9379	62A-11-413(2) or Section 62A-11-505, by electronic funds transfer.
9380	(2) Distribution of child support payments by electronic payment under this section
9381	shall be made to:
9382	(a) an account of the obligee; or
9383	(b) an account that may be accessed by the obligee through the use of an electronic
9384	access card.
9385	(3) (a) Subject to Subsection (3)(b), the office may make rules, pursuant to Title 63G
9386	Chapter 3, Utah Administrative Rulemaking Act, to allow exceptions to the requirement to
9387	make distributions by electronic funds transfer under Subsection (1).
9388	(b) The rules described in Subsection (3)(a) may only allow exceptions under
9389	circumstances where:
9390	(i) requiring distribution by electronic funds transfer would result in an undue hardship
9391	to the office or a person: or

(ii) it is not likely that distribution will be made to the obligee on a recurring basis.

1 **HEALTH AND HUMAN SERVICES RECODIFICATION - HEALTH CARE ADMINISTRATION** 2 3 LONG TITLE 4 **General Description:** 5 6 This bill recodifies portions of the Utah Health Code and Utah Human Services Code. 7 **Highlighted Provisions:** 8 This bill: 9 recodifies provisions regarding: 10 health care administration and assistance; and 11 vital statistics, health data, and the Utah Medical Examiner; and 12 makes technical and corresponding changes. Money Appropriated in this Bill: 13 None 14 **Other Special Clauses:** 15 16 This bill contains revisor's instructions. 17 List of sections affected: AMENDS: 18 19 26B-3-101 20 26B-8-101 21 **RENUMBERS AND AMENDS:** 22 26-18-2.1 26B-3-102 23 26-18-2.2 26B-3-103 24 26-18-2.3 26B-3-104 25 26-18-2.4 26B-3-105 26-18-2.5 26 26B-3-106 26-18-2.6 26B-3-107 27 26-18-3 28 26B-3-108

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                        Chapter 3. Health Care - Delivery and Assistance.
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313
           Part 1. Health Care Assistance.
314
           26B-3-101. [Licensing and oversight -- Reserved] Definitions.
315
           [Reserved] As used in this part:
316
           (1) "Applicant" means any person who requests assistance under the medical
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     programs of the state.
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319	(2) "CMS" means the Centers for Medicare and Medicaid Services within the United
320	States Department of Health and Human Services.
321	(3) "Division" means the Division of Integrated Healthcare within the department.
322	(4) "Enrollee" or "member" means an individual whom the department has determined
323	to be eligible for assistance under the Medicaid program.
324	(5) "Medicaid program" means the state program for medical assistance for persons
325	who are eligible under the state plan adopted pursuant to Title XIX of the federal Social
326	Security Act.
327	(6) "Medical assistance" means services furnished or payments made to or on behalf
328	of a member.
329	(7) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended
330	primarily for operation on highways and used by an applicant or recipient to meet basic
331	transportation needs and has a fair market value below 40% of the applicable amount of the
332	federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted
333	annually for inflation.
334	(b) "Passenger vehicle" does not include:
335	(i) a commercial vehicle, as defined in Section 41-1a-102;
336	(ii) an off-highway vehicle, as defined in Section 41-1a-102; or
337	(iii) a motor home, as defined in Section 13-14-102.
338	(8) "PPACA" means the same as that term is defined in Section 31A-1-301.
339	(9) "Recipient" means a person who has received medical assistance under the
340	Medicaid program.
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342	[26-18-2.1.] <u>26B-3-102.</u> Division Creation.
343	There is created, within the department, the Division of [Medicaid and Health
344	Financing] Integrated Healthcare which shall be responsible for implementing, organizing,
345	and maintaining the Medicaid program and the Children's Health Insurance Program
346	established in Section [26-40-103] <u>26B-3-XXX</u> , in accordance with the provisions of this
347	chapter and applicable federal law.
348	
349	[26-18-2.2.] <u>26B-3-103.</u> State Medicaid director Appointment
350	Responsibilities.

(1) The state Medicaid director shall be appointed by the governor, after consultation 351 352 with the executive director, with the advice and consent of the Senate. 353 (2) The state Medicaid director may employ other employees as necessary to implement the provisions of this chapter, and shall: 354 355 (a) administer the responsibilities of the division as set forth in this chapter; 356 [(2)] (b) administer the division's budget; and 357 (3) (c) establish and maintain a state plan for the Medicaid program in compliance with federal law and regulations. 358 359 360 [26-18-2.3.] 26B-3-104. Division responsibilities -- Emphasis -- Periodic 361 assessment. (1) In accordance with the requirements of Title XIX of the Social Security Act and 362 363 applicable federal regulations, the division is responsible for the effective and impartial administration of this chapter in an efficient, economical manner. The division shall: 364 (a) establish, on a statewide basis, a program to safeguard against unnecessary or 365 inappropriate use of Medicaid services, excessive payments, and unnecessary or 366 inappropriate hospital admissions or lengths of stay: 367 368 (b) deny any provider claim for services that fail to meet criteria established by the 369 division concerning medical necessity or appropriateness; and 370 (c) place its emphasis on high quality care to recipients in the most economical and 371 cost-effective manner possible, with regard to both publicly and privately provided services. (2) The division shall implement and utilize cost-containment methods, where 372 373 possible, which may include: 374 (a) prepayment and postpayment review systems to determine if utilization is 375 reasonable and necessary; 376 (b) preadmission certification of nonemergency admissions; 377 (c) mandatory outpatient, rather than inpatient, surgery in appropriate cases; (d) second surgical opinions; 378 379 (e) procedures for encouraging the use of outpatient services; 380 (f) consistent with Sections [26-18-2.4] 26B-3-105 and 58-17b-606, a Medicaid drug

(g) coordination of benefits; and

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program;

- 383 (h) review and exclusion of providers who are not cost effective or who have abused 384 the Medicaid program, in accordance with the procedures and provisions of federal law and 385 regulation.
 - (3) The state Medicaid director shall periodically assess the cost effectiveness and health implications of the existing Medicaid program, and consider alternative approaches to the provision of covered health and medical services through the Medicaid program, in order to reduce unnecessary or unreasonable utilization.
 - (4) (a) The department shall ensure Medicaid program integrity by conducting internal audits of the Medicaid program for efficiencies, best practices, and cost avoidance.
 - (b) The department shall coordinate with the Office of the Inspector General for Medicaid Services created in Section 63A-13-201 to implement Subsection (2) and to address Medicaid fraud, waste, or abuse as described in Section 63A-13-202.

[26-18-2.4.] <u>26B-3-105.</u> Medicaid drug program -- Preferred drug list.

- (1) A Medicaid drug program developed by the department under Subsection [26-18-2.3] 26B-3-104 (2)(f):
- (a) shall, notwithstanding Subsection [26-18-2.3] <u>26B-3-104</u>(1)(b), be based on clinical and cost-related factors which include medical necessity as determined by a provider in accordance with administrative rules established by the Drug Utilization Review Board;
- (b) may include therapeutic categories of drugs that may be exempted from the drug program;
- (c) may include placing some drugs, except the drugs described in Subsection (2), on a preferred drug list:
 - (i) to the extent determined appropriate by the department; and
 - (ii) in the manner described in Subsection (3) for psychotropic drugs;
- (d) notwithstanding the requirements of Part 2, Drug Utilization Review Board, and except as provided in Subsection (3), shall immediately implement the prior authorization requirements for a nonpreferred drug that is in the same therapeutic class as a drug that is:
 - (i) on the preferred drug list on the date that this act takes effect; or
 - (ii) added to the preferred drug list after this act takes effect; and
- 413 (e) except as prohibited by Subsections 58-17b-606(4) and (5), shall establish the 414 prior authorization requirements established under Subsections (1)(c) and (d) which shall

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permit a health care provider or the health care provider's agent to obtain a prior authorization override of the preferred drug list through the department's pharmacy prior authorization review process, and which shall:

- (i) provide either telephone or fax approval or denial of the request within 24 hours of the receipt of a request that is submitted during normal business hours of Monday through Friday from 8 a.m. to 5 p.m.;
- (ii) provide for the dispensing of a limited supply of a requested drug as determined appropriate by the department in an emergency situation, if the request for an override is received outside of the department's normal business hours; and
- (iii) require the health care provider to provide the department with documentation of the medical need for the preferred drug list override in accordance with criteria established by the department in consultation with the Pharmacy and Therapeutics Committee.
 - (2) (a) [For purposes of] As used in this Subsection (2):
 - (i) "Immunosuppressive drug":

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- (A) means a drug that is used in immunosuppressive therapy to inhibit or prevent activity of the immune system to aid the body in preventing the rejection of transplanted organs and tissue; and
- (B) does not include drugs used for the treatment of autoimmune disease or diseases that are most likely of autoimmune origin.
- (ii) "Stabilized" means a health care provider has documented in the patient's medical chart that a patient has achieved a stable or steadfast medical state within the past 90 days using a particular psychotropic drug.
- (b) A preferred drug list developed under the provisions of this section may not include an immunosuppressive drug.
- (c) (i) The state Medicaid program shall reimburse for a prescription for an immunosuppressive drug as written by the health care provider for a patient who has undergone an organ transplant.
- <u>(ii)</u> For purposes of Subsection 58-17b-606(4), and with respect to patients who have undergone an organ transplant, the prescription for a particular immunosuppressive drug as written by a health care provider meets the criteria of demonstrating to the department a medical necessity for dispensing the prescribed immunosuppressive drug.
 - (d) Notwithstanding the requirements of Part 2, Drug Utilization Review Board, the

state Medicaid drug program may not require the use of step therapy for immunosuppressive drugs without the written or oral consent of the health care provider and the patient.

- (e) The department may include a sedative hypnotic on a preferred drug list in accordance with Subsection (2)(f).
- 451 (f) The department shall grant a prior authorization for a sedative hypnotic that is not 452 on the preferred drug list under Subsection (2)(e), if the health care provider has 453 documentation related to one of the following conditions for the Medicaid client:
- (i) a trial and failure of at least one preferred agent in the drug class, including the name of the preferred drug that was tried, the length of therapy, and the reason for the discontinuation;
 - (ii) detailed evidence of a potential drug interaction between current medication and the preferred drug;
 - (iii) detailed evidence of a condition or contraindication that prevents the use of the preferred drug;
- 461 (iv) objective clinical evidence that a patient is at high risk of adverse events due to a 462 therapeutic interchange with a preferred drug;
 - (v) the patient is a new or previous Medicaid client with an existing diagnosis previously stabilized with a nonpreferred drug; or
 - (vi) other valid reasons as determined by the department.
 - (g) A prior authorization granted under Subsection (2)(f) is valid for one year from the date the department grants the prior authorization and shall be renewed in accordance with Subsection (2)(f).
 - (3) (a) [For purposes of] As used in this Subsection (3), "psychotropic drug" means the following classes of drugs:
 - (i) atypical anti-psychotic;
- 472 (ii) anti-depressant;

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- 473 (iii) anti-convulsant/mood stabilizer;
- 474 (iv) anti-anxiety; and
- 475 (v) attention deficit hyperactivity disorder stimulant.
- (b) (i) The department shall develop a preferred drug list for psychotropic drugs.
- 477 (ii) Except as provided in Subsection (3)(d), a preferred drug list for psychotropic drugs developed under this section shall allow a health care provider to override the

- preferred drug list by writing "dispense as written" on the prescription for the psychotropic 479 480 drug.
- (ii) A health care provider may not override Section 58-17b-606 by writing "dispense 481 as written" on a prescription. 482
- (c) The department, and a Medicaid accountable care organization that is responsible 483 484 for providing behavioral health, shall:
 - (i) establish a system to:

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- 486 (A) track health care provider prescribing patterns for psychotropic drugs:
- 487 (B) educate health care providers who are not complying with the preferred drug list; 488 and
 - (C) implement peer to peer education for health care providers whose prescribing practices continue to not comply with the preferred drug list; and
 - (ii) determine whether health care provider compliance with the preferred drug list is at least:
 - (A) 55% of prescriptions by July 1, 2017;
 - (B) 65% of prescriptions by July 1, 2018; and
 - (C) 75% of prescriptions by July 1, 2019.
 - (d) Beginning October 1, 2019, the department shall eliminate the dispense as written override for the preferred drug list, and shall implement a prior authorization system for psychotropic drugs, in accordance with Subsection (2)(f), if by July 1, 2019, the department has not realized annual savings from implementing the preferred drug list for psychotropic drugs of at least \$750,000 General Fund savings.

[26-18-2.5.] 26B-3-106. Simplified enrollment and renewal process for Medicaid and other state medical programs -- Financial institutions.

- (1) The department may apply for grants and accept donations to make technology system improvements necessary to implement a simplified enrollment and renewal process for the Medicaid program, Utah Premium Partnership, and Primary Care Network Demonstration Project programs.
- 508 (2) (a) The department may enter into an agreement with a financial institution doing 509 business in the state to develop and operate a data match system to identify an applicant's 510 or enrollee's assets that:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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511	(i) uses automated data exchanges to the maximum extent feasible; and
512	(ii) requires a financial institution each month to provide the name, record address,
513	Social Security number, other taxpayer identification number, or other identifying information
514	for each applicant or enrollee who maintains an account at the financial institution.
515	(b) The department may pay a reasonable fee to a financial institution for compliance
516	with this Subsection (2), as provided in Section 7-1-1006.
517	(c) A financial institution may not be liable under any federal or state law to any
518	person for any disclosure of information or action taken in good faith under this Subsection
519	(2).
520	(d) The department may disclose a financial record obtained from a financial
521	institution under this section only for the purpose of, and to the extent necessary in, verifying
522	eligibility as provided in this section and Section 26-40-105.
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524	[26-18-2.6.] <u>26B-3-107.</u> Dental benefits.
525	(1) (a) Except as provided in Subsection (8), the division may establish a competitive
526	bid process to bid out Medicaid dental benefits under this chapter.
527	(b) The division may bid out the Medicaid dental benefits separately from other
528	program benefits.
529	(2) The division shall use the following criteria to evaluate dental bids:
530	(a) ability to manage dental expenses;
531	(b) proven ability to handle dental insurance;
532	(c) efficiency of claim paying procedures;
533	(d) provider contracting, discounts, and adequacy of network; and
534	(e) other criteria established by the department.
535	(3) The division shall request bids for the program's benefits at least once every five
536	years.
537	(4) The division's contract with dental plans for the program's benefits shall include
538	risk sharing provisions in which the dental plan must accept 100% of the risk for any
539	difference between the division's premium payments per client and actual dental
540	expenditures.

- (5) The division may not award contracts to: 541 542
 - (a) more than three responsive bidders under this section; or

- (b) an insurer that does not have a current license in the state.
- (6) (a) The division may cancel the request for proposals if:
- 545 (i) there are no responsive bidders; or
- 546 (ii) the division determines that accepting the bids would increase the program's costs.
- (b) If the division cancels a request for proposal or a contract that results from a request for proposal described in Subsection (6)(a), the division shall report to the Health and Human Services Interim Committee regarding the reasons for the decision.
 - (7) Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this section.
- 552 (8) (a) The division may:

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- (i) establish a dental health care delivery system and payment reform pilot program for Medicaid dental benefits to increase access to cost effective and quality dental health care by increasing the number of dentists available for Medicaid dental services; and
 - (ii) target specific Medicaid populations or geographic areas in the state.
- (b) The pilot program shall establish compensation models for dentists and dental hygienists that:
 - (i) increase access to quality, cost effective dental care; and
- (ii) use funds from the Division of Family Health and Preparedness that are available to reimburse dentists for educational loans in exchange for the dentist agreeing to serve Medicaid and under-served populations.
- (c) The division may amend the state plan and apply to the Secretary of <u>the United</u>

 States Department of Health and Human Services for waivers or pilot programs if necessary to establish the new dental care delivery and payment reform model.
- (d) The division shall evaluate the pilot program's effect on the cost of dental care and access to dental care for the targeted Medicaid populations.
- (9) (a) As used in this Subsection (9), "dental hygienist" means an individual who is licensed as a dental hygienist under Section 58-69-301.
- 570 (b) The department shall reimburse a dental hygienist for dental services performed in 571 a public health setting and in accordance with Subsection (9)(c) beginning on the earlier of:
 - (i) January 1, 2023; or
- 573 (ii) 30 days after the date on which the replacement of the department's Medicaid 574 Management Information System software is complete.

- 575 (c) The department shall reimburse a dental hygienist directly for a service provided through the Medicaid program if:
 - (i) the dental hygienist requests to be reimbursed directly; and

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- 578 (ii) the dental hygienist provides the service within the scope of practice described in Section 58-69-801.
- 580 (d) Before November 30 of each year in which the department reimburses dental 581 hygienists in accordance with Subsection (9)(c), the department shall report to the Health 582 and Human Services Interim Committee, for the previous fiscal year:
- 583 (i) the number and geographic distribution of dental hygienists who requested to be 584 reimbursed directly;
 - (ii) the total number of Medicaid enrollees who were served by a dental hygienist who were reimbursed under this Subsection (9);
- 587 (iii) the total amount reimbursed directly to dental hygienists under this Subsection 588 (9);
- (iv) the specific services and billing codes that are reimbursed under this Subsection (9); and
 - (v) the aggregate amount reimbursed for each service and billing code described in Subsection (9)(d)(iv).
 - (e) (i) Except as provided in this Subsection (9), nothing in this Subsection (9) shall be interpreted as expanding or otherwise altering the limitations and scope of practice for a dental hygienist.
 - (ii) A dental hygienist may only directly bill and receive compensation for billing codes that fall within the scope of practice of a dental hygienist.

[26-18-3.] <u>26B-3-108.</u> Administration of Medicaid program by department -- Reporting to the Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility standards -- Internal audits -- Health opportunity accounts.

- (1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.
- (2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking

607	Act, the requirements of Title XIX, and applicable federal regulations.
608	(b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
609	necessary to implement the program:
610	(i) the standards used by the department for determining eligibility for Medicaid
611	services;
612	(ii) the services and benefits to be covered by the Medicaid program;
613	(iii) reimbursement methodologies for providers under the Medicaid program; and
614	(iv) a requirement that:
615	(A) a person receiving Medicaid services shall participate in the electronic exchange
616	of clinical health records established in accordance with Section [26-1-37] <u>26B-X-XXX</u>
617	unless the individual opts out of participation;
618	(B) prior to enrollment in the electronic exchange of clinical health records the
619	enrollee shall receive notice of enrollment in the electronic exchange of clinical health
620	records and the right to opt out of participation at any time; and
621	(C) beginning July 1, 2012, when the program sends enrollment or renewal
622	information to the enrollee and when the enrollee logs onto the program's website, the
623	enrollee shall receive notice of the right to opt out of the electronic exchange of clinical health
624	records.
625	(3) (a) The department shall, in accordance with Subsection (3)(b), report to the
626	Social Services Appropriations Subcommittee when the department:
627	(i) implements a change in the Medicaid State Plan;
628	(ii) initiates a new Medicaid waiver;
629	(iii) initiates an amendment to an existing Medicaid waiver;
630	(iv) applies for an extension of an application for a waiver or an existing Medicaid
631	waiver;
632	(v) applies for or receives approval for a change in any capitation rate within the
633	Medicaid program; or
634	(vi) initiates a rate change that requires public notice under state or federal law.
635	(b) The report required by Subsection (3)(a) shall:
636	(i) be submitted to the Social Services Appropriations Subcommittee prior to the

(ii) include:

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department implementing the proposed change; and

- (A) a description of the department's current practice or policy that the department is 639 proposing to change; 640
 - (B) an explanation of why the department is proposing the change;
- (C) the proposed change in services or reimbursement, including a description of the 642 643 effect of the change;
- 644 (D) the effect of an increase or decrease in services or benefits on individuals and families: 645
- (E) the degree to which any proposed cut may result in cost-shifting to more 646 expensive services in health or human service programs; and 647
 - (F) the fiscal impact of the proposed change, including:

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- (I) the effect of the proposed change on current or future appropriations from the Legislature to the department;
- (II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;
- (III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and
- (IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.
- (4) Any rules adopted by the department under Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63G-3-502.
- (5) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including:
 - (a) the determination of the eligibility of individuals for the program;
 - (b) recovery of overpayments; and
- (c) consistent with Section [26-20-13] 26B-X-XXX, and to the extent permitted by law and quality control services, enforcement of fraud and abuse laws.
- (6) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:
 - (a) termination from the program;
 - (b) recovery of claim reimbursements incorrectly paid; and

- (c) those specified in Section 1919 of Title XIX of the federal Social Security Act. 671
- 672 (7) (a) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated 673 credits to be used by the division in accordance with the requirements of Section 1919 of 674 675 Title XIX of the federal Social Security Act.
- (b) In accordance with Section 63J-1-602.2, sanctions collected under this Subsection 676 (7) are nonlapsing. 677
 - (8) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or [Chapter 40, Utah Children's Health Insurance Act] Part X, Children's Health Insurance Program, the department shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.
 - (b) Before Subsection (8)(a) may be applied:
 - (i) the federal government shall:

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- (A) determine that Subsection (8)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;
 - (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or
- (C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and
- (ii) the department shall determine that Subsection (8)(a) can be implemented within existing funding.
 - (9) (a) [For purposes of] As used in this Subsection (9):
- (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as defined in 42 U.S.C. Sec. 1382c(a)(1); and
- (ii) "spend down" means an amount of income in excess of the allowable income standard that shall be paid in cash to the department or incurred through the medical services not paid by Medicaid.
- (b) In determining whether an applicant or recipient who is aged, blind, or has a disability is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:
 - (i) the allowable income standard for eligibility for services or benefits; and
 - (ii) the allowable income standard for eligibility as a result of spend down.
 - (10) The department shall conduct internal audits of the Medicaid program.

- 703 (11) (a) The department may apply for and, if approved, implement a demonstration 704 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
- (b) A health opportunity account established under Subsection (11)(a) shall be an
 alternative to the existing benefits received by an individual eligible to receive Medicaid under
 this chapter.
- 708 (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid 709 program.
- 710 (12) (a) (i) The department shall apply for, and if approved, implement an amendment 711 to the state plan under this Subsection (12) for benefits for:
- 712 (A) medically needy pregnant women;
- 713 (B) medically needy children; and
- 714 (C) medically needy parents and caretaker relatives.
- (ii) The department may implement the eligibility standards of Subsection (12)(b) for eligibility determinations made on or after the date of the approval of the amendment to the state plan.
- (b) In determining whether an applicant is eligible for benefits described in Subsection (12)(a)(i), the department shall:
- (i) disregard resources held in an account in the savings plan created under Title 53B, Chapter 8a, Utah Educational Savings Plan, if the beneficiary of the account is:
 - (A) under the age of 26; and
- (B) living with the account owner, as that term is defined in Section 53B-8a-102, or temporarily absent from the residence of the account owner; and
- 725 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as 726 resources for a benefit determination, if the withdrawal was not used for qualified higher 727 education costs as that term is defined in Section 53B-8a-102.5.
- 728 (13) (a) The department may not deny or terminate eligibility for Medicaid solely 729 because an individual is:
- 730 (i) incarcerated; and

- 731 (ii) not an inmate as defined in Section 64-13-1.
- (b) Subsection (13)(a) does not require the Medicaid program to provide coverage for any services for an individual while the individual is incarcerated.
- 734 (14) The department is a party to, and may intervene at any time in, any judicial or

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- 736 (a) to which the Department of Workforce Services is a party; and
- 737 (b) that involves medical assistance under[t] this chapter.
- 738 [(i) Title 26, Chapter 18, Medical Assistance Act; or]
- 739 [(ii) Title 26, Chapter 40, Utah Children's Health Insurance Act.]

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- [26-18-3.1.] 26B-3-109. Medicaid expansion.
- (1) The purpose of this section is to expand the coverage of the Medicaid program to persons who are in categories traditionally not served by that program.
- (2) Within appropriations from the Legislature, the department may amend the state plan for medical assistance to provide for eligibility for Medicaid:
- (a) on or after July 1, 1994, for children 12 to 17 years old who live in households below the federal poverty income guideline; and
- (b) on or after July 1, 1995, for persons who have incomes below the federal poverty income guideline and who are aged, blind, or have a disability.
- (3) (a) Within appropriations from the Legislature, on or after July 1, 1996, the Medicaid program may provide for eligibility for persons who have incomes below the federal poverty income guideline.
- (b) In order to meet the provisions of this subsection, the department may seek approval for a demonstration project under 42 U.S.C. Sec. 1315 from the secretary of the United States Department of Health and Human Services.
- (4) The Medicaid program shall provide for eligibility for persons as required by Subsection [26-18-3.9] <u>26B-3-113</u>(2).
- (5) Services available for persons described in this section shall include required Medicaid services and may include one or more optional Medicaid services if those services are funded by the Legislature. The department may also require persons described in Subsections (1) through (3) to meet an asset test.

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- 763 [26-18-3.5.] <u>26B-3-110.</u> Copayments by recipients -- Employer sponsored plans.
 - (1) The department shall selectively provide for enrollment fees, premiums, deductions, cost sharing or other similar charges to be paid by recipients, their spouses, and

parents, within the limitations of federal law and regulation.

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- (2) Beginning May 1, 2006, within appropriations by the Legislature and as a means to increase health care coverage among the uninsured, the department shall take steps to promote increased participation in employer sponsored health insurance, including:
- (a) maximizing the health insurance premium subsidy provided under the state's 1115 demonstration waiver by:
- (i) ensuring that state funds are matched by federal funds to the greatest extent allowable; and
- 775 (ii) as the department determines appropriate, seeking federal approval to do one or 776 more of the following:
 - (A) eliminate or otherwise modify the annual enrollment fee;
 - (B) eliminate or otherwise modify the schedule used to determine the level of subsidy provided to an enrollee each year;
 - (C) reduce the maximum number of participants allowable under the subsidy program; or
 - (D) otherwise modify the program in a manner that promotes enrollment in employer sponsored health insurance; and
 - (b) exploring the use of other options, including the development of a waiver under the Medicaid Health Insurance Flexibility Demonstration Initiative or other federal authority.

[26-18-3.6.] <u>26B-3-111.</u> Income and resources from institutionalized spouses.

- (1) As used in this section:
- (a) "Community spouse" means the spouse of an institutionalized spouse.
- (b) (i) "Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance for the spouse exceeds the amount of monthly income otherwise available to the community spouse, determined without regard to the allowance, except as provided in Subsection (1)(b)(ii).
- (ii) If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse may not be less than the amount of the monthly income so ordered.
 - (c) "Community spouse resource allowance" is the amount of combined resources

that are protected for a community spouse living in the community, which the division shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, based on the amounts established by the United States Department of Health and Human Services.

- (d) "Excess shelter allowance" for a community spouse means the amount by which the sum of the spouse's expense for rent or mortgage payment, taxes, and insurance, and in the case of condominium or cooperative, required maintenance charge, for the community spouse's principal residence and the spouse's actual expenses for electricity, natural gas, and water utilities or, at the discretion of the department, the federal standard utility allowance under SNAP as defined in Section 35A-1-102, exceeds 30% of the amount described in Subsection (9).
- (e) "Family member" means a minor dependent child, dependent parents, or dependent sibling of the institutionalized spouse or community spouse who are residing with the community spouse.
- (f) (i) "Institutionalized spouse" means a person who is residing in a nursing facility and is married to a spouse who is not in a nursing facility.
- (ii) An "institutionalized spouse" does not include a person who is not likely to reside in a nursing facility for at least 30 consecutive days.
- (g) "Nursing care facility" means the same as that term is defined in Section [26-21-2] 818 26B-2-201.
 - (2) The division shall comply with this section when determining eligibility for medical assistance for an institutionalized spouse.
 - (3) For services furnished during a calendar year beginning on or after January 1, 1999, the community spouse resource allowance shall be increased by the division by an amount as determined annually by CMS.
 - (4) The division shall compute, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse:
 - (a) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest; and
 - (b) a spousal share, which is 1/2 of the resources described in Subsection (4)(a).
 - (5) At the request of an institutionalized spouse or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse

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and upon the receipt of relevant documentation of resources, the division shall promptly assess and document the total value described in Subsection (4)(a) and shall provide a copy of that assessment and documentation to each spouse and shall retain a copy of the assessment. When the division provides a copy of the assessment, it shall include a notice stating that the spouse may request a hearing under Subsection (11).

- (6) When determining eligibility for medical assistance under this chapter:
- (a) Except as provided in Subsection (6)(b), all resources held by either the institutionalized spouse, community spouse, or both, are considered to be available to the institutionalized spouse.
- (b) Resources are considered to be available to the institutionalized spouse only to the extent that the amount of those resources exceeds the community spouse resource allowance at the time of application for medical assistance under this chapter.
- (7) (a) The division may not find an institutionalized spouse to be ineligible for medical assistance by reason of resources determined under Subsection (5) to be available for the cost of care when:
- (i) the institutionalized spouse has assigned to the state any rights to support from the community spouse;
- (ii) except as provided in Subsection (7)(b), the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment; or
- (iii) the division determines that denial of medical assistance would cause an undue burden.
- (b) Subsection (7)(a)(ii) does not prevent the division from seeking a court order for an assignment of support.
- (8) During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is eligible for medical assistance, the resources of the community spouse may not be considered to be available to the institutionalized spouse.
- (9) When an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly for the cost of care in the nursing care facility, the division shall deduct from the spouse's monthly income the following amounts in the following order:
 - (a) a personal needs allowance, the amount of which is determined by the division;

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- (b) a community spouse monthly income allowance, but only to the extent that the 863 864 income of the institutionalized spouse is made available to, or for the benefit of, the 865 community spouse;
 - (c) a family allowance for each family member, equal to at least 1/3 of the amount that the amount described in Subsection (10)(a) exceeds the amount of the family member's monthly income; and
 - (d) amounts for incurred expenses for the medical or remedial care for the institutionalized spouse.
 - (10) The division shall establish a minimum monthly maintenance needs allowance for each community spouse that includes:
 - (a) an amount established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, based on the amounts established by the United States Department of Health and Human Services; and
 - (b) an excess shelter allowance.

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- (11) (a) An institutionalized spouse or a community spouse may request a hearing with respect to the determinations described in Subsections (11)(e)(i) through (v) if an application for medical assistance has been made on behalf of the institutionalized spouse.
- (b) A hearing under this subsection regarding the community spouse resource allowance shall be held by the division within 90 days from the date of the request for the hearing.
- (c) If either spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance provided under Subsection (10), an amount adequate to provide additional income as is necessary.
- (d) If either spouse establishes that the community spouse resource allowance, in relation to the amount of income generated by the allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance, an amount adequate to provide a minimum monthly maintenance needs allowance.
- (e) A hearing may be held under this subsection if either the institutionalized spouse or community spouse is dissatisfied with a determination of:

(i) the community spouse monthly income allowance;

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- (ii) the amount of monthly income otherwise available to the community spouse;
- (iii) the computation of the spousal share of resources under Subsection (4);
 - (iv) the attribution of resources under Subsection (6); or
 - (v) the determination of the community spouse resource allocation.
 - (12) (a) An institutionalized spouse may transfer an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to or for the sole benefit of the community spouse.
 - (b) The transfer under Subsection (12)(a) shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account the time necessary to obtain a court order under Subsection (12)(c).
 - (c) [Chapter 19, Medical Benefits Recovery Act] Part X, Medical Benefits Recovery, does not apply if a court has entered an order against an institutionalized spouse for the support of the community spouse.

[26-18-3.8.] <u>26B-3-112.</u> Maximizing use of premium assistance programs -- Utah's Premium Partnership for Health Insurance.

- (1) (a) The department shall seek to maximize the use of Medicaid and Children's Health Insurance Program funds for assistance in the purchase of private health insurance coverage for Medicaid-eligible and non-Medicaid-eligible individuals.
 - (b) The department's efforts to expand the use of premium assistance shall:
- (i) include, as necessary, seeking federal approval under all Medicaid and Children's Health Insurance Program premium assistance provisions of federal law, including provisions of [the Patient Protection and Affordable Care Act, Public Law 111-148] PPACA;
- (ii) give priority to, but not be limited to, expanding the state's Utah Premium Partnership for Health Insurance Program, including as required under Subsection (2); and
- (iii) encourage the enrollment of all individuals within a household in the same plan, where possible, including enrollment in a plan that allows individuals within the household transitioning out of Medicaid to retain the same network and benefits they had while enrolled in Medicaid.
- (2) The department shall seek federal approval of an amendment to the state's Utah Premium Partnership for Health Insurance program to adjust the eligibility determination for

single adults and parents who have an offer of employer sponsored insurance. The amendment shall:

- 929 (a) be within existing appropriations for the Utah Premium Partnership for Health 930 Insurance program; and
 - (b) provide that adults who are up to 200% of the federal poverty level are eligible for premium subsidies in the Utah Premium Partnership for Health Insurance program.
 - (3) For the fiscal year 2020-21, the department shall seek authority to increase the maximum premium subsidy per month for adults under the Utah Premium Partnership for Health Insurance program to \$300.
 - (4) Beginning with the fiscal year 2021-22, and in each subsequent fiscal year, the department may increase premium subsidies for single adults and parents who have an offer of employer-sponsored insurance to keep pace with the increase in insurance premium costs, subject to appropriation of additional funding.

[26-18-3.9.] <u>26B-3-113.</u> Expanding the Medicaid program.

942 (1) As used in this section:

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- 943 [(a) "CMS" means the Centers for Medicare and Medicaid Services in the United 944 States Department of Health and Human Services.]
- 945 [(b)] (a) "Federal poverty level" means the same as that term is defined in Section 946 [26-18-411] 26B-3-XXX.
 - [(c)] (b) "Medicaid expansion" means an expansion of the Medicaid program in accordance with this section.
 - [(d)] (c) "Medicaid Expansion Fund" means the Medicaid Expansion Fund created in Section [26-36b-208] 26B-3-XXX.
 - (2) (a) As set forth in Subsections (2) through (5), eligibility criteria for the Medicaid program shall be expanded to cover additional low-income individuals.
 - (b) The department shall continue to seek approval from CMS to implement the Medicaid waiver expansion as defined in Section [26-18-415] 26B-3-XXX.
- (c) The department may implement any provision described in Subsections

 [26-18-415] 26B-3-XXX (2)(b)(iii) through (viii) in a Medicaid expansion if the department receives approval from CMS to implement that provision.
 - (3) The department shall expand the Medicaid program in accordance with this

959	Subsection	(3) if the	department:
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- 960 (a) receives approval from CMS to:
- 961 (i) expand Medicaid coverage to eligible individuals whose income is below 95% of 962 the federal poverty level;
 - (ii) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(b) for enrolling an individual in the Medicaid expansion under this Subsection (3); and
 - (iii) permit the state to close enrollment in the Medicaid expansion under this Subsection (3) if the department has insufficient funds to provide services to new enrollment under the Medicaid expansion under this Subsection (3);
 - (b) pays the state portion of costs for the Medicaid expansion under this Subsection(3) with funds from:
 - (i) the Medicaid Expansion Fund;
 - (ii) county contributions to the nonfederal share of Medicaid expenditures; or
- 972 (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid 973 expenditures; and
 - (c) closes the Medicaid program to new enrollment under the Medicaid expansion under this Subsection (3) if the department projects that the cost of the Medicaid expansion under this Subsection (3) will exceed the appropriations for the fiscal year that are authorized by the Legislature through an appropriations act adopted in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.
 - (4) (a) The department shall expand the Medicaid program in accordance with this Subsection (4) if the department:
 - (i) receives approval from CMS to:
- 982 (A) expand Medicaid coverage to eligible individuals whose income is below 95% of 983 the federal poverty level;
 - (B) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(y) for enrolling an individual in the Medicaid expansion under this Subsection (4); and
 - (C) permit the state to close enrollment in the Medicaid expansion under this Subsection (4) if the department has insufficient funds to provide services to new enrollment under the Medicaid expansion under this Subsection (4);
- 989 (ii) pays the state portion of costs for the Medicaid expansion under this Subsection 990 (4) with funds from:

991 (A) the Medicaid Expansion Fund;

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- (B) county contributions to the nonfederal share of Medicaid expenditures; or
- (C) any other contributions, funds, or transfers from a nonstate agency for Medicaid 993 994 expenditures; and
 - (iii) closes the Medicaid program to new enrollment under the Medicaid expansion under this Subsection (4) if the department projects that the cost of the Medicaid expansion under this Subsection (4) will exceed the appropriations for the fiscal year that are authorized by the Legislature through an appropriations act adopted in accordance with Title 63J. Chapter 1, Budgetary Procedures Act.
 - (b) The department shall submit a waiver, an amendment to an existing waiver, or a state plan amendment to CMS to:
 - (i) administer federal funds for the Medicaid expansion under this Subsection (4) according to a per capita cap developed by the department that includes an annual inflationary adjustment, accounts for differences in cost among categories of Medicaid expansion enrollees, and provides greater flexibility to the state than the current Medicaid payment model;
 - (ii) limit, in certain circumstances as defined by the department, the ability of a qualified entity to determine presumptive eligibility for Medicaid coverage for an individual enrolled in a Medicaid expansion under this Subsection (4):
 - (iii) impose a lock-out period if an individual enrolled in a Medicaid expansion under this Subsection (4) violates certain program requirements as defined by the department;
 - (iv) allow an individual enrolled in a Medicaid expansion under this Subsection (4) to remain in the Medicaid program for up to a 12-month certification period as defined by the department; and
 - (v) allow federal Medicaid funds to be used for housing support for eligible enrollees in the Medicaid expansion under this Subsection (4).
 - (5) (a) (i) If CMS does not approve a waiver to expand the Medicaid program in accordance with Subsection (4)(a) on or before January 1, 2020, the department shall develop proposals to implement additional flexibilities and cost controls, including cost sharing tools, within a Medicaid expansion under this Subsection (5) through a request to CMS for a waiver or state plan amendment.
 - (ii) The request for a waiver or state plan amendment described in Subsection

(5)(a)(i) shall include: 1023

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- 1024 (A) a path to self-sufficiency for qualified adults in the Medicaid expansion that includes employment and training as defined in 7 U.S.C. Sec. 2015(d)(4); and 1025
- 1026 (B) a requirement that an individual who is offered a private health benefit plan by an 1027 employer to enroll in the employer's health plan.
 - (iii) The department shall submit the request for a waiver or state plan amendment developed under Subsection (5)(a)(i) on or before March 15, 2020.
- 1030 (b) Notwithstanding Sections [26-18-18] 26B-3-XXX and 63J-5-204, and in 1031 accordance with this Subsection (5), eligibility for the Medicaid program shall be expanded to 1032 include all persons in the optional Medicaid expansion population under [the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 PPACA and the Health Care 1033 1034 Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations 1035 and guidance, on the earlier of:
- 1036 (i) the day on which CMS approves a waiver to implement the provisions described in 1037 Subsections (5)(a)(ii)(A) and (B); or
 - (ii) July 1, 2020.
- (c) The department shall seek a waiver, or an amendment to an existing waiver, from 1039 1040 federal law to:
 - (i) implement each provision described in Subsections [26-18-415] 26B-3-XXX (2)(b)(iii) through (viii) in a Medicaid expansion under this Subsection (5);
 - (ii) limit, in certain circumstances as defined by the department, the ability of a qualified entity to determine presumptive eligibility for Medicaid coverage for an individual enrolled in a Medicaid expansion under this Subsection (5); and
 - (iii) impose a lock-out period if an individual enrolled in a Medicaid expansion under this Subsection (5) violates certain program requirements as defined by the department.
- 1048 (d) The eligibility criteria in this Subsection (5) shall be construed to include all 1049 individuals eligible for the health coverage improvement program under Section [26-18-411] 26B-3-XXX. 1050
- 1051 (e) The department shall pay the state portion of costs for a Medicaid expansion under this Subsection (5) entirely from: 1052
 - (i) the Medicaid Expansion Fund;
 - (ii) county contributions to the nonfederal share of Medicaid expenditures; or

- 1055 (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid expenditures.
- 1057 (f) If the costs of the Medicaid expansion under this Subsection (5) exceed the funds 1058 available under Subsection (5)(e):
 - (i) the department may reduce or eliminate optional Medicaid services under this chapter; and
- (ii) savings, as determined by the department, from the reduction or elimination of optional Medicaid services under Subsection (5)(f)(i) shall be deposited into the Medicaid Expansion Fund; and
 - (iii) the department may submit to CMS a request for waivers, or an amendment of existing waivers, from federal law necessary to implement budget controls within the Medicaid program to address the deficiency.
 - (g) If the costs of the Medicaid expansion under this Subsection (5) are projected by the department to exceed the funds available in the current fiscal year under Subsection (5)(e), including savings resulting from any action taken under Subsection (5)(f):
 - (i) the governor shall direct the [Department of Health, Department of Human Services,] department and Department of Workforce Services to reduce commitments and expenditures by an amount sufficient to offset the deficiency:
 - (A) proportionate to the share of total current fiscal year General Fund appropriations for each of those agencies; and
 - (B) up to 10% of each agency's total current fiscal year General Fund appropriations;
- (ii) the Division of Finance shall reduce allotments to the [Department of Health,

 Department of Human Services,] department and Department of Workforce Services by a

 percentage:
 - (A) proportionate to the amount of the deficiency; and
- 1080 (B) up to 10% of each agency's total current fiscal year General Fund appropriations; and
 - (iii) the Division of Finance shall deposit the total amount from the reduced allotments described in Subsection (5)(g)(ii) into the Medicaid Expansion Fund.
 - (6) The department shall maximize federal financial participation in implementing this section, including by seeking to obtain any necessary federal approvals or waivers.
 - (7) Notwithstanding Sections 17-43-201 and 17-43-301, a county does not have to

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provide matching funds to the state for the cost of providing Medicaid services to newly 1087 1088 enrolled individuals who qualify for Medicaid coverage under a Medicaid expansion.

- (8) The department shall report to the Social Services Appropriations Subcommittee 1089 1090 on or before November 1 of each year that a Medicaid expansion is operational:
 - (a) the number of individuals who enrolled in the Medicaid expansion;
 - (b) costs to the state for the Medicaid expansion;
- 1093 (c) estimated costs to the state for the Medicaid expansion for the current and 1094 following fiscal years:
 - (d) recommendations to control costs of the Medicaid expansion; and
- 1096 (e) as calculated in accordance with Subsections [26-36b-204] 26B-3-XXX (4) and [26-36c-204] 26B-3-XXX (2), the state's net cost of the qualified Medicaid expansion. 1097

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[26-18-4.] 26B-3-114. Department standards for eligibility under Medicaid --Funds for abortions.

- (1) (a) The department may develop standards and administer policies relating to eligibility under the Medicaid program as long as they are consistent with Subsection [26-18-3] 26B-3-108 (8).
- (b) An applicant receiving Medicaid assistance may be limited to particular types of care or services or to payment of part or all costs of care determined to be medically necessary.
- (2) The department may not provide any funds for medical, hospital, or other medical expenditures or medical services to otherwise eligible persons where the purpose of the assistance is to perform an abortion, unless the life of the mother would be endangered if an abortion were not performed.
- (3) Any employee of the department who authorizes payment for an abortion contrary to the provisions of this section is guilty of a class B misdemeanor and subject to forfeiture of office.
- (4) Any person or organization that, under the guise of other medical treatment, provides an abortion under auspices of the Medicaid program is guilty of a third degree felony and subject to forfeiture of license to practice medicine or authority to provide medical services and treatment.

[26-18-5.] <u>26B-3-115.</u>	Contracts for provision of medical services Federal
provisions modifying departr	ment rules Compliance with Social Security Act.

- (1) The department may contract with other public or private agencies to purchase or provide medical services in connection with the programs of the division. Where these programs are used by other government entities, contracts shall provide that other government entities, in compliance with state and federal law regarding intergovernmental transfers, transfer the state matching funds to the department in amounts sufficient to satisfy needs of the specified program.
- (2) Contract terms shall include provisions for maintenance, administration, and service costs.
- (3) If a federal legislative or executive provision requires modifications or revisions in an eligibility factor established under this chapter as a condition for participation in medical assistance, the department may modify or change its rules as necessary to qualify for participation.
 - (4) The provisions of this section do not apply to department rules governing abortion.
- (5) The department shall comply with all pertinent requirements of the Social Security Act and all orders, rules, and regulations adopted thereunder when required as a condition of participation in benefits under the Social Security Act.

[26-18-5.5.] 26B-3-116. Liability insurance required.

The Medicaid program may not reimburse a home health agency, as defined in Section [26-21-2] <u>26B-2-201</u>, for home health services provided to an enrollee unless the home health agency has liability coverage of:

- (1) at least \$500,000 per incident; or
- 1143 (2) an amount established by department rule made in accordance with Title 63G, 1144 Chapter 3, Utah Administrative Rulemaking Act.

1146 [26-18-6.] 26B-3-117. Federal aid -- Authority of executive director.

(1) The executive director, with the approval of the governor, may bind the state to any executive or legislative provisions promulgated or enacted by the federal government which invite the state to participate in the distribution, disbursement or administration of any fund or service advanced, offered or contributed in whole or in part by the federal

- government for purposes consistent with the powers and duties of the department.
- 1152 (2) Such funds shall be used as provided in this chapter and be administered by the department for purposes related to medical assistance programs. 1153

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- [26-18-7.] **26B-3-118.** Medical vendor rates.
- 1156 (1) Medical vendor payments made to providers of services for and in behalf of recipient households shall be based upon predetermined rates from standards developed by 1157 1158 the division in cooperation with providers of services for each type of service purchased by 1159 the division
- 1160 (2) As far as possible, the rates paid for services shall be established in advance of 1161 the fiscal year for which funds are to be requested.

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- [26-18-8.] 26B-3-119. Enforcement of public assistance statutes.
- 1164 (1) The department shall enforce or contract for the enforcement of Sections 35A-1-503, 35A-3-108, 35A-3-110, 35A-3-111, 35A-3-112, and 35A-3-603 to the extent that 1165 1166 these sections pertain to benefits conferred or administered by the division under this 1167 chapter, to the extent allowed under federal law or regulation.
 - (2) The department may contract for services covered in Section 35A-3-111 insofar as that section pertains to benefits conferred or administered by the division under this chapter.

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- [26-18-9.] 26B-3-120. Prohibited acts of state or local employees of Medicaid program -- Violation a misdemeanor.
- (1) Each state or local employee responsible for the expenditure of funds under the state Medicaid program, each individual who formerly was such an officer or employee, and each partner of such an officer or employee is prohibited for a period of one year after termination of such responsibility from committing any act, the commission of which by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by Section 207 or Section 208 of Title 18, United States Code.
 - (2) Violation of this section is a class A misdemeanor.

1183	[26-18-11.] <u>26B-3-121.</u> Rural hospitals.
1184	(1) [For purposes of] As used in this section "rural hospital" means a hospital located
1185	outside of a standard metropolitan statistical area, as designated by the United States
1186	Bureau of the Census.
1187	(2) For purposes of the Medicaid program, the [Division of Medicaid and Health
1188	Financing] division may not discriminate among rural hospitals on the basis of size.
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1190	[26-18-13.] <u>26B-3-122.</u> Telemedicine Reimbursement Rulemaking.
1191	(1) (a) As used in this section, communication by telemedicine is considered
1192	face-to-face contact between a health care provider and a patient under the state's medical
1193	assistance program if:
1194	(i) the communication by telemedicine meets the requirements of administrative rules
1195	adopted in accordance with Subsection (3); and
1196	(ii) the health care services are eligible for reimbursement under the state's medical
1197	assistance program.
1198	(b) This Subsection (1) applies to any managed care organization that contracts with
1199	the state's medical assistance program.
1200	(2) The reimbursement rate for telemedicine services approved under this section:
1201	(a) shall be subject to reimbursement policies set by the state plan; and
1202	(b) may be based on:
1203	(i) a monthly reimbursement rate;
1204	(ii) a daily reimbursement rate; or
1205	(iii) an encounter rate.
1206	(3) The department shall adopt administrative rules in accordance with Title 63G,
1207	Chapter 3, Utah Administrative Rulemaking Act, which establish:
1208	(a) the particular telemedicine services that are considered face-to-face encounters
1209	for reimbursement purposes under the state's medical assistance program; and
1210	(b) the reimbursement methodology for the telemedicine services designated under
1211	Subsection (3)(a).
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1213	[26-18-13.5.] <u>26B-3-123.</u> Reimbursement of telemedicine services and
1214	telepsychiatric consultations.

1215	(1) As used in this section:
1216	(a) "Telehealth services" means the same as that term is defined in Section
1217	26-60-102.
1218	(b) "Telemedicine services" means the same as that term is defined in Section
1219	26-60-102.
1220	(c) "Telepsychiatric consultation" means a consultation between a physician and a
1221	board certified psychiatrist, both of whom are licensed to engage in the practice of medicine
1222	in the state, that utilizes:
1223	(i) the health records of the patient, provided from the patient or the referring
1224	physician;
1225	(ii) a written, evidence-based patient questionnaire; and
1226	(iii) telehealth services that meet industry security and privacy standards, including
1227	compliance with the:
1228	(A) Health Insurance Portability and Accountability Act; and
1229	(B) Health Information Technology for Economic and Clinical Health Act, Pub. L. No.
1230	111-5, 123 Stat. 226, 467, as amended.
1231	(2) This section applies to:
1232	(a) a managed care organization that contracts with the Medicaid program; and
1233	(b) a provider who is reimbursed for health care services under the Medicaid program.
1234	(3) The Medicaid program shall reimburse for telemedicine services at the same rate
1235	that the Medicaid program reimburses for other health care services.
1236	(4) The Medicaid program shall reimburse for telepsychiatric consultations at a rate
1237	set by the Medicaid program.
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1239	[26-18-15.] <u>26B-3-124.</u> Process to promote health insurance coverage for
1240	children.
1241	(1) The department, in collaboration with the Department of Workforce Services and
1242	the State Board of Education, shall develop a process to promote health insurance coverage
1243	for a child in school when:
1244	(a) the child applies for free or reduced price school lunch;
1245	(b) a child enrolls in or registers in school; and
1246	(c) other appropriate school related opportunities.

	WORKING DRAFT FOR DISCUSSION FURPOSES ONLY
1247	(2) The department, in collaboration with the Department of Workforce Services, shall
1248	promote and facilitate the enrollment of children identified under Subsection (1) without
1249	health insurance in the Utah Children's Health Insurance Program, the Medicaid program, or
1250	the Utah Premium Partnership for Health Insurance Program.
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1252	[26-18-16.] <u>26B-3-125.</u> Medicaid Continuous eligibility Promoting payment
1253	and delivery reform.
1254	(1) In accordance with Subsection (2), and within appropriations from the Legislature,
1255	the department may amend the state Medicaid plan to:
1256	(a) create continuous eligibility for up to 12 months for an individual who has qualified
1257	for the state Medicaid program;
1258	(b) provide incentives in managed care contracts for an individual to obtain
1259	appropriate care in appropriate settings; and
1260	(c) require the managed care system to accept the risk of managing the Medicaid
1261	population assigned to the plan amendment in return for receiving the benefits of providing
1262	quality and cost effective care.
1263	(2) If the department amends the state Medicaid plan under Subsection (1)(a) or (b),
1264	the department:
1265	(a) shall ensure that the plan amendment:
1266	(i) is cost effective for the state Medicaid program;
1267	(ii) increases the quality and continuity of care for recipients; and
1268	(iii) calculates and transfers administrative savings from continuous enrollment from
1269	the Department of Workforce Services to the [Department of Health] department; and
1270	(b) may limit the plan amendment under Subsection (1)(a) or (b) to select geographic
1271	areas or specific Medicaid populations.
1272	(3) The department may seek approval for a state plan amendment, waiver, or a
1273	demonstration project from the Secretary of the United States Department of Health and
1274	Human Services if necessary to implement a plan amendment under Subsection (1)(a) or
1275	(b).
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1277	[26-18-17.] <u>26B-3-126.</u> Patient notice of health care provider privacy practices.

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(1) (a) For purposes of this section:

- 1279 (i) "Health care provider" means a health care provider as defined in Section 1280 78B-3-403 who:
- (A) receives payment for medical services from the Medicaid program established in this chapter, or the Children's Health Insurance Program established in Chapter 40, Utah Children's Health Insurance Act; and
 - (B) submits a patient's personally identifiable information to the Medicaid eligibility database or the Children's Health Insurance Program eligibility database.
 - (ii) "HIPAA" means 45 C.F.R. Parts 160, 162, and 164, Health Insurance Portability and Accountability Act of 1996, as amended.
 - (b) Beginning July 1, 2013, this section applies to the Medicaid program, the Children's Health Insurance Program created in [Chapter 40, Utah Children's Health Insurance Act] Part X, Children's Health Insurance Program, and a health care provider.
 - (2) A health care provider shall, as part of the notice of privacy practices required by HIPAA, provide notice to the patient or the patient's personal representative that the health care provider either has, or may submit, personally identifiable information about the patient to the Medicaid eligibility database and the Children's Health Insurance Program eligibility database.
 - (3) The Medicaid program and the Children's Health Insurance Program may not give a health care provider access to the Medicaid eligibility database or the Children's Health Insurance Program eligibility database unless the health care provider's notice of privacy practices complies with Subsection (2).
 - (4) The department may adopt an administrative rule to establish uniform language for the state requirement regarding notice of privacy practices to patients required under Subsection (2).

[26-18-18.] <u>26B-3-127.</u> Optional Medicaid expansion.

- (1) The department and the governor may not expand the state's Medicaid program under PPACA unless:
- 1307 (a) the department expands Medicaid in accordance with Section [26-18-415] 1308 26B-3-XXX; or
- 1309 (b) (i) the governor or the governor's designee has reported the intention to expand 1310 the state Medicaid program under PPACA to the Legislature in compliance with the

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legislative review process in Section	[26-18-3]	26B-3-108	and
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- (ii) the governor submits the request for expansion of the Medicaid program for optional populations to the Legislature under the high impact federal funds request process required by Section 63J-5-204.
 - (2) (a) The department shall request approval from CMS for waivers from federal statutory and regulatory law necessary to implement the health coverage improvement program under Section [26-18-411] 26B-3-XXX.
- 1318 (b) The health coverage improvement program under Section [26-18-411] 1319 <u>26B-3-XXX</u> is not subject to the requirements in Subsection (1).

1321 [26-18-19.] 26B-3-128. Medicaid vision services -- Request for proposals.

The department may select one or more contractors, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to provide vision services to the Medicaid populations that are eligible for vision services, as described in department rules, without restricting provider participation, and within existing appropriations from the Legislature.

[26-18-20.] <u>26B-3-129.</u> Review of claims -- Audit and investigation procedures.

- (1) (a) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with providers and health care professionals subject to audit and investigation under the state Medicaid program, to establish procedures for audits and investigations that are fair and consistent with the duties of the department as the single state agency responsible for the administration of the Medicaid program under Section 26-18-3 and Title XIX of the Social Security Act.
- (b) If the providers and health care professionals do not agree with the rules proposed or adopted by the department under Subsection (1)(a), the providers or health care professionals may:
- (i) request a hearing for the proposed administrative rule or seek any other remedies under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- (ii) request a review of the rule by the Legislature's Administrative Rules Review and General Oversight Committee created in Section 63G-3-501.
 - (2) The department shall:
 - (a) notify and educate providers and health care professionals subject to audit and

- investigation under the Medicaid program of the providers' and health care professionals' responsibilities and rights under the administrative rules adopted by the department under the provisions of this section;
- 1346 (b) ensure that the department, or any entity that contracts with the department to conduct audits:
- (i) has on staff or contracts with a medical or dental professional who is experienced in the treatment, billing, and coding procedures used by the type of provider being audited; and
- (ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if the provider who is the subject of the audit disputes the findings of the audit;
- 1353 (c) ensure that a finding of overpayment or underpayment to a provider is not based on extrapolation, as defined in Section 63A-13-102, unless:
 - (i) there is a determination that the level of payment error involving the provider exceeds a 10% error rate:
 - (A) for a sample of claims for a particular service code; and
 - (B) over a three year period of time;

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- (ii) documented education intervention has failed to correct the level of payment error; and
 - (iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in reimbursement for a particular service code on an annual basis; and
 - (d) require that any entity with which the office contracts, for the purpose of conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both overpayments and underpayments.
 - (3) (a) If the department, or a contractor on behalf of the department:
 - (i) intends to implement the use of extrapolation as a method of auditing claims, the department shall, prior to adopting the extrapolation method of auditing, report its intent to use extrapolation to the Social Services Appropriations Subcommittee; and
 - (ii) determines Subsections (2)(c)(i) through (iii) are applicable to a provider, the department or the contractor may use extrapolation only for the service code associated with the findings under Subsections (2)(c)(i) through (iii).
- 1373 (b) (i) If extrapolation is used under this section, a provider may, at the provider's option, appeal the results of the audit based on:

1375	(A) each individual claim; or
1376	(B) the extrapolation sample.
1377	(ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G,
1378	General Government, Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid
1379	program and its manual or rules, or other laws or rules that may provide remedies to
1380	providers.
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1382	[26-18-21.] <u>26B-3-130.</u> Medicaid intergovernmental transfer report Approval
1383	requirements.
1384	(1) As used in this section:
1385	(a) (i) "Intergovernmental transfer" means the transfer of public funds from:
1386	(A) a local government entity to another nonfederal governmental entity; or
1387	(B) from a nonfederal, government owned health care facility regulated under
1388	[Chapter 21, Health Care Facility Licensing and Inspection Act] Chapter 2, Part 2, Health
1389	Care Facility Licensing and Inspection, to another nonfederal governmental entity.
1390	(ii) "Intergovernmental transfer" does not include:
1391	(A) the transfer of public funds from one state agency to another state agency; or
1392	(B) a transfer of funds from the University of Utah Hospitals and Clinics.
1393	(b) (i) "Intergovernmental transfer program" means a federally approved
1394	reimbursement program or category that is authorized by the Medicaid state plan or waiver
1395	authority for intergovernmental transfers.
1396	(ii) "Intergovernmental transfer program" does not include the addition of a provider to
1397	an existing intergovernmental transfer program.
1398	(c) "Local government entity" means a county, city, town, special service district, local
1399	district, or local education agency as that term is defined in Section 63J-5-102.
1400	(d) "Non-state government entity" means a hospital authority, hospital district, health
1401	care district, special service district, county, or city.
1402	(2) (a) An entity that receives federal Medicaid dollars from the department as a result
1403	of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August

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(i) information regarding the payments funded with the intergovernmental transfer as

1 each year thereafter, provide the department with:

authorized by and consistent with state and federal law;

- 1407 (ii) information regarding the entity's ability to repay federal funds, to the extent 1408 required by the department in the contract for the intergovernmental transfer; and
 - (iii) other information reasonably related to the intergovernmental transfer that may be required by the department in the contract for the intergovernmental transfer.
 - (b) On or before October 15, 2017, and on or before October 15 each subsequent year, the department shall prepare a report for the Executive Appropriations Committee that includes:
 - (i) the amount of each intergovernmental transfer under Subsection (2)(a):
 - (ii) a summary of changes to CMS regulations and practices that are known by the department regarding federal funds related to an intergovernmental transfer program; and
 - (iii) other information the department gathers about the intergovernmental transfer under Subsection (2)(a).
 - (3) The department shall not create a new intergovernmental transfer program after July 1, 2017, unless the department reports to the Executive Appropriations Committee, in accordance with Section 63J-5-206, before submitting the new intergovernmental transfer program for federal approval. The report shall include information required by Subsection 63J-5-102(1)(d) and the analysis required in Subsections (2)(a) and (b).
 - (4) (a) The department shall enter into new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contracts and contract amendments adding new nursing care facilities and new non-state government entity operators in accordance with this Subsection (4).
 - (b) (i) If the nursing care facility expects to receive less than \$1,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department shall enter into a Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract with the non-state government entity operator of the nursing care facility.
 - (ii) If the nursing care facility expects to receive between \$1,000,000 and \$10,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department shall enter into a Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract with the non-state

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government entity operator of the nursing care facility after receiving the approval of the Executive Appropriations Committee.

- (iii) If the nursing care facility expects to receive more than \$10,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department may not approve the application without obtaining approval from the Legislature and the governor.
- (c) A non-state government entity may not participate in the Nursing Care Facility
 Non-State Government-Owned Upper Payment Limit program unless the non-state
 government entity is a special service district, county, or city that operates a hospital or holds
 a license under Chapter 21, Health Care Facility Licensing and Inspection Act.
- (d) Each non-state government entity that participates in the Nursing Care Facility

 Non-State Government-Owned Upper Payment Limit program shall certify to the department that:
- (i) the non-state government entity is a local government entity that is able to make an intergovernmental transfer under applicable state and federal law;
- (ii) the non-state government entity has sufficient public funds or other permissible sources of seed funding that comply with the requirements in 42 C.F.R. Part 433, Subpart B;
- (iii) the funds received from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program are:
- (A) for each nursing care facility, available for patient care until the end of the non-state government entity's fiscal year; and
- (B) used exclusively for operating expenses for nursing care facility operations, patient care, capital expenses, rent, royalties, and other operating expenses; and
- (iv) the non-state government entity has completed all licensing, enrollment, and other forms and documents required by federal and state law to register a change of ownership with the department and with CMS.
- (5) The department shall add a nursing care facility to an existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract if:
- (a) the nursing care facility is managed by or affiliated with the same non-state government entity that also manages one or more nursing care facilities that are included in an existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit

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1471	program contract; and
1472	(b) the non-state government entity makes the certification described in Subsection
1473	(4)(d)(ii).
1474	(6) The department may not increase the percentage of the administrative fee paid by
1475	a non-state government entity to the department under the Nursing Care Facility Non-State
1476	Government-Owned Upper Payment Limit program.
1477	(7) The department may not condition participation in the Nursing Care Facility
1478	Non-State Government-Owned Upper Payment Limit program on:
1479	(a) a requirement that the department be allowed to direct or determine the types of
1480	patients that a non-state government entity will treat or the course of treatment for a patient
1481	in a non-state government nursing care facility; or
1482	(b) a requirement that a non-state government entity or nursing care facility post a
1483	bond, purchase insurance, or create a reserve account of any kind.
1484	(8) The non-state government entity shall have the primary responsibility for ensuring
1485	compliance with Subsection (4)(d)(ii).
1486	(9) (a) The department may not enter into a new Nursing Care Facility Non-State
1487	Government-Owned Upper Payment Limit program contract before January 1, 2019.
1488	(b) Subsection (9)(a) does not apply to:
1489	(i) a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit
1490	program contract that was included in the federal funds request summary under Section
1491	63J-5-201 for fiscal year 2018; or
1492	(ii) a nursing care facility that is operated or managed by the same company as a
1493	nursing care facility that was included in the federal funds request summary under Section
1494	63J-5-201 for fiscal year 2018.
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1496	[26-18-22.] <u>26B-3-131.</u> Screening, Brief Intervention, and Referral to Treatment
1497	Medicaid reimbursement.
1498	(1) As used in this section:
1499	(a) "Controlled substance prescriber" means a controlled substance prescriber, as
1500	that term is defined in Section 58-37-6.5, who:

58-37-6.5(2), before providing the SBIRT services; and

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(i) has a record of having completed SBIRT training, in accordance with Subsection

1503	(II) is a Medicaid enrolled health care provider.
1504	(b) "SBIRT" means the same as that term is defined in Section 58-37-6.5.
1505	(2) The department shall reimburse a controlled substance prescriber who provides
1506	SBIRT services to a Medicaid enrollee who is 13 years of age or older for the SBIRT
1507	services.
1508	
1509	[26-18-23.] <u>26B-3-132.</u> Prescribing policies for opioid prescriptions.
1510	(1) The department may implement a prescribing policy for certain opioid
1511	prescriptions that is substantially similar to the prescribing policies required in Section
1512	31A-22-615.5.
1513	(2) The department may amend the state program and apply for waivers for the state
1514	program, if necessary, to implement Subsection (1).
1515	
1516	[26-18-24.] <u>26B-3-133.</u> Reimbursement for long-acting reversible
1517	contraception immediately following childbirth.
1518	(1) As used in this section, "long-acting reversible contraception" means a
1519	contraception method that requires administration less than once per month, including:
1520	(a) an intrauterine device; and
1521	(b) a contraceptive implant.
1522	(2) The division shall separately identify and reimburse, from other labor and delivery
1523	services within the Medicaid program, the provision and insertion of long-acting reversible
1524	contraception immediately after childbirth.
1525	
1526	[26-18-25.] <u>26B-3-134.</u> Coverage of exome sequence testing.
1527	(1) As used in this section, "exome sequence testing" means a genomic technique for
1528	sequencing the genome of an individual for diagnostic purposes.
1529	(2) The Medicaid program shall reimburse for exome sequence testing:
1530	(a) for an enrollee who:
1531	(i) is younger than 21 years of age; and
1532	(ii) who remains undiagnosed after exhausting all other appropriate diagnostic-related
1533	tests;
1534	(b) performed by a nationally recognized provider with significant experience in

1535	exome sequence testing;
1536	(c) that is medically necessary; and
1537	(d) at a rate set by the Medicaid program.
1538	
1539	[26-18-26.] <u>26B-3-135.</u> Reimbursement for nonemergency secured behavioral
1540	health transport providers.
1541	The department may not reimburse a nonemergency secured behavioral health
1542	transport provider that is designated under Section [26-8a-303] <u>26B-2-XXX</u> .
1543	
1544	[26-18-27.] <u>26B-3-136.</u> Children's Health Care Coverage Program.
1545	(1) As used in this section:
1546	(a) "CHIP" means the Children's Health Insurance Program created in Section
1547	[26-40-103] <u>26B-3-XXX</u> .
1548	(b) "Program" means the Children's Health Care Coverage Program created in
1549	Subsection (2).
1550	(2) (a) There is created the Children's Health Care Coverage Program within the
1551	department.
1552	(b) The purpose of the program is to:
1553	(i) promote health insurance coverage for children in accordance with Section
1554	26-18-15;
1555	(ii) conduct research regarding families who are eligible for Medicaid and CHIP to
1556	determine awareness and understanding of available coverage;
1557	(iii) analyze trends in disenrollment and identify reasons that families may not be
1558	renewing enrollment, including any barriers in the process of renewing enrollment;
1559	(iv) administer surveys to recently enrolled CHIP and children's Medicaid enrollees to
1560	identify:
1561	(A) how the enrollees learned about coverage; and
1562	(B) any barriers during the application process;
1563	(v) develop promotional material regarding CHIP and children's Medicaid eligibility,
1564	including outreach through social media, video production, and other media platforms;
1565	(vi) identify ways that the eligibility website for enrollment in CHIP and children's
1566	Medicaid can be redesigned to increase accessibility and enhance the user experience;

1567	(vii) identify outreach opportunities, including partnerships with community
1568	organizations including:
1569	(A) schools;
1570	(B) small businesses;
1571	(C) unemployment centers;
1572	(D) parent-teacher associations; and
1573	(E) youth athlete clubs and associations; and
1574	(viii) develop messaging to increase awareness of coverage options that are available
1575	through the department.
1576	(3) (a) The department may not delegate implementation of the program to a private
1577	entity.
1578	(b) Notwithstanding Subsection (3)(a), the department may contract with a media
1579	agency to conduct the activities described in Subsection (2)(b)(iv) and (vii).
1580	
1581	[26-18-28.] <u>26B-3-137.</u> Reimbursement for diabetes prevention program.
1582	(1) As used in this section, "DPP" means the National Diabetes Prevention Program
1583	developed by the United States Centers for Disease Control and Prevention.
1584	(2) Beginning July 1, 2022, the Medicaid program shall reimburse a provider for an
1585	enrollee's participation in the DPP if the enrollee:
1586	(a) meets the DPP's eligibility requirements; and
1587	(b) has not previously participated in the DPP after July 1, 2022, while enrolled in the
1588	Medicaid program.
1589	(3) Subject to appropriation, the Medicaid program may set the rate for
1590	reimbursement.
1591	(4) The department may apply for a state plan amendment if necessary to implement
1592	this section.
1593	(5) (a) On or after July 1, 2025, but before October 1, 2025, the department shall
1594	provide a written report regarding the efficacy of the DPP and reimbursement under this
1595	section to the Health and Human Services Interim Committee.
1596	(b) The report described in Subsection (5)(a) shall include:
1597	(i) the total number of enrollees with a prediabetic condition as of July 1, 2022;
1598	(ii) the total number of enrollees as of July 1, 2022, with a diagnosis of type 2

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1599	diabetes;
1600	(iii) the total number of enrollees who participated in the DPP;
1601	(iv) the total cost incurred by the state to implement this section; and
1602	(v) any conclusions that can be drawn regarding the impact of the DPP on the rate of
1603	type 2 diabetes for enrollees.
1604	
1605	[26-18-427.] <u>26B-3-138.</u> Behavioral health delivery working group.
1606	(1) As used in this section, "targeted adult Medicaid program" means the same as
1607	that term is defined in Section 26-18-411.
1608	(2) On or before May 31, 2022, the department shall convene a working group to
1609	collaborate with the department on:
1610	(a) establishing specific and measurable metrics regarding:
1611	(i) compliance of managed care organizations in the state with federal Medicaid
1612	managed care requirements;
1613	(ii) timeliness and accuracy of authorization and claims processing in accordance with
1614	Medicaid policy and contract requirements;
1615	(iii) reimbursement by managed care organizations in the state to providers to
1616	maintain adequacy of access to care;
1617	(iv) availability of care management services to meet the needs of Medicaid-eligible
1618	individuals enrolled in the plans of managed care organizations in the state; and
1619	(v) timeliness of resolution for disputes between a managed care organization and the
1620	managed care organization's providers and enrollees;
1621	(b) improving the delivery of behavioral health services in the Medicaid program;
1622	(c) proposals to implement the delivery system adjustments authorized under
1623	Subsection 26-18-428(3); and
1624	(d) issues that are identified by managed care organizations, behavioral health
1625	service providers, and the department.
1626	(3) The working group convened under Subsection (2) shall:
1627	(a) meet quarterly; and
1628	(b) consist of at least the following individuals:
1629	(i) the executive director or the executive director's designee;
1630	(ii) for each Medicaid accountable care organization with which the department

1631	contracts, an individual selected by the accountable care organization;
1632	(iii) five individuals selected by the department to represent various types of
1633	behavioral health services providers, including, at a minimum, individuals who represent
1634	providers who provide the following types of services:
1635	(A) acute inpatient behavioral health treatment;
1636	(B) residential treatment;
1637	(C) intensive outpatient or partial hospitalization treatment; and
1638	(D) general outpatient treatment;
1639	(iv) a representative of an association that represents behavioral health treatment
1640	providers in the state, designated by the Utah Behavioral Healthcare Council convened by
1641	the Utah Association of Counties;
1642	(v) a representative of an organization representing behavioral health organizations;
1643	(vi) the chair of the Utah Substance Use and Mental Health Advisory Council created
1644	in Section 63M-7-301;
1645	(vii) a representative of an association that represents local authorities who provide
1646	public behavioral health care, designated by the department;
1647	(viii) one member of the Senate, appointed by the president of the Senate; and
1648	(ix) one member of the House of Representatives, appointed by the speaker of the
1649	House of Representatives.
1650	(4) The working group convened under this section shall recommend to the
1651	department:
1652	(a) specific and measurable metrics under Subsection (2)(a);
1653	(b) how physical and behavioral health services may be integrated for the targeted
1654	adult Medicaid program, including ways the department may address issues regarding:
1655	(i) filing of claims;
1656	(ii) authorization and reauthorization for treatment services;
1657	(iii) reimbursement rates; and
1658	(iv) other issues identified by the department, behavioral health services providers, or
1659	Medicaid managed care organizations;
1660	(c) ways to improve delivery of behavioral health services to enrollees, including
1661	changes to statute or administrative rule; and

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(d) wraparound service coverage for enrollees who need specific, nonclinical services

1663	to ensure a path to success.
1664	
1665	26-18-602. Definitions.
1666	As used in this part:
1667	(1) "Abuse" means:
1668	(a) an action or practice that:
1669	(i) is inconsistent with sound fiscal, business, or medical practices; and
1670	(ii) results, or may result, in unnecessary Medicaid related costs or other medical or
1671	hospital assistance costs; or
1672	(b) reckless or negligent upcoding.
1673	[(2) "Auditor's Office" means the Office of Internal Audit, within the department.]
1674	[(3)] <u>(2)</u> "Fraud" means intentional or knowing:
1675	(a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs,
1676	claims, reimbursement, or practice; or
1677	(b) deception or misrepresentation in relation to medical or hospital assistance funds,
1678	costs, claims, reimbursement, or practice.
1679	[(4) "Medical or hospital assistance" is as defined in Section 26-18-2.]
1680	[(5)] (3) "Upcoding" means assigning an inaccurate billing code for a service that is
1681	payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking
1682	into account reasonable opinions derived from official published coding definitions, would
1683	result in a lower Medicaid payment or reimbursement.
1684	[(6)] <u>(4)</u> "Waste" means overutilization of resources or inappropriate payment.
1685	
1686	[26-18-603.] <u>26B-3-139.</u> Adjudicative proceedings related to Medicaid funds.
1687	(1) If a proceeding of the department, under Title 63G, Chapter 4, Administrative
1688	Procedures Act, relates in any way to recovery of Medicaid funds:
1689	(a) the presiding officer shall be designated by the executive director of the
1690	department and report directly to the executive director or, in the discretion of the executive
1691	director, report directly to the director of the Office of Internal Audit; and
1692	(b) the decision of the presiding officer is the recommended decision to the executive
1693	director of the department or a designee of the executive director who is not in the division.
1694	(2) Subsection (1) does not apply to hearings conducted by the Department of

- 1695 Workforce Services relating to medical assistance eligibility determinations.
- 1696 (3) If a proceeding of the department, under Title 63G, Chapter 4, Administrative
 1697 Procedures Act, relates in any way to Medicaid or Medicaid funds, the following may attend
 1698 and present evidence or testimony at the proceeding:
 - (a) the director of the Office of Internal Audit, or the director's designee; and
 - (b) the inspector general of Medicaid services or the inspector general's designee.
- 1701 (4) In relation to a proceeding of the department under Title 63G, Chapter 4,
- Administrative Procedures Act, a person may not, outside of the actual proceeding, attempt to influence the decision of the presiding officer.

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- 1705 [26-18-604.] 26B-3-140. Division duties -- Reporting.
- 1706 (1) As used in this section:
- 1707 (a) "Abuse" means:
- (i) an action or practice that:
- (A) is inconsistent with sound fiscal, business, or medical practices; and
- 1710 (B) results, or may result, in unnecessary Medicaid related costs or other medical or
- 1711 <u>hospital assistance costs; or</u>
- 1712 <u>(ii) reckless or negligent upcoding.</u>
- (b) "Fraud" means intentional or knowing:
- (i) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs,
- 1715 <u>claims, reimbursement, or practice; or</u>
- (ii) deception or misrepresentation in relation to medical or hospital assistance funds,
 costs, claims, reimbursement, or practice.
- (c) "Upcoding" means assigning an inaccurate billing code for a service that is
 payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking
 into account reasonable opinions derived from official published coding definitions, would
- 1721 result in a lower Medicaid payment or reimbursement.
- (d) "Waste" means overutilization of resources or inappropriate payment.
- 1723 (2) The division shall:
- [(1)] (a) develop and implement procedures relating to Medicaid funds and medical or hospital assistance funds to ensure that providers do not receive:
- 1726 [(a)] (i) duplicate payments for the same goods or services;

[(b)] (ii) payment for goods or services by resubmitting a claim for which: 1727 1728 (A) payment has been disallowed on the grounds that payment would be a violation of federal or state law, administrative rule, or the state plan; and 1729 1730 (B) the decision to disallow the payment has become final: 1731 (iii) payment for goods or services provided after a recipient's death, including 1732 payment for pharmaceuticals or long-term care; or 1733 (iv) payment for transporting an unborn infant; 1734 [(2)] (b) consult with [the Centers for Medicaid and Medicare Services] CMS, other 1735 states, and the Office of Inspector General of Medicaid Services to determine and implement 1736 best practices for discovering and eliminating fraud, waste, and abuse of Medicaid funds and medical or hospital assistance funds; 1737 1738 (c) actively seek repayment from providers for improperly used or paid: 1739 [(a)] (i) Medicaid funds; and 1740 [(b)] (ii) medical or hospital assistance funds; 1741 (4) (d) coordinate, track, and keep records of all division efforts to obtain 1742 repayment of the funds described in Subsection [(3)] (c), and the results of those efforts; 1743 (e) keep Medicaid pharmaceutical costs as low as possible by actively seeking 1744 to obtain pharmaceuticals at the lowest price possible, including, on a quarterly basis for the 1745 pharmaceuticals that represent the highest 45% of state Medicaid expenditures for 1746 pharmaceuticals and on an annual basis for the remaining pharmaceuticals: 1747 [(a)] (i) tracking changes in the price of pharmaceuticals; 1748 (b) (ii) checking the availability and price of generic drugs; 1749 (c) (iii) reviewing and updating the state's maximum allowable cost list; and 1750 (d) (iv) comparing pharmaceutical costs of the state Medicaid program to available 1751 pharmacy price lists; and 1752 (f) provide training, on an annual basis, to the employees of the division who 1753 make decisions on billing codes, or who are in the best position to observe and identify 1754 upcoding, in order to avoid and detect upcoding. 1755 1756 [26-18-703.] 26B-3-141. Medical assistance from division or Department of 1757 Workforce Services and compliance under adoption assistance interstate compact --

Penalty for fraudulent claim.

1759	(1) As used in this section:
1760	(a) "Adoption assistance" means the same as that term is defined in Section
1761	80-2-809.
1762	(b) "Adoption assistance agreement" means the same as that term is defined in
1763	Section 80-2-809.
1764	(c) "Adoption assistance interstate compact" means an agreement executed by the
1765	Division of Child and Family Services with any other state in accordance with Section
1766	80-2-809.
1767	[(1)] (2) (a) A child who is a resident of this state and is the subject of an adoption
1768	assistance interstate compact is entitled to receive medical assistance from the division and
1769	the Department of Workforce Services by filing a certified copy of the child's adoption
1770	assistance agreement with the division or the Department of Workforce Services.
1771	(b) The adoptive parent of the child described in Subsection [(1)(a)] (2)(a) shall
1772	annually provide the division or the Department of Workforce Services with evidence
1773	verifying that the adoption assistance agreement is still effective.
1774	[(2)] (3) The Department of Workforce Services shall consider the recipient of
1775	medical assistance under this section as the Department of Workforce Services does any
1776	other recipient of medical assistance under an adoption assistance agreement executed by
1777	the Division of Child and Family Services.
1778	[(3)] (4) (a) A person may not submit a claim for payment or reimbursement under
1779	this section that the person knows is false, misleading, or fraudulent.
1780	(b) A violation of Subsection [(3)] (4) (a) is a third degree felony.
1781	(5) The division and the Department of Workforce Services shall:
1782	(a) cooperate with the Division of Child and Family Services in regards to an adoption
1783	assistance interstate compact; and
1784	(b) comply with an adoption assistance interstate compact.
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1786	Part 2. Medicaid Waivers
1787	
1788	[26-18-403.] <u>26B-3-201.</u> Medicaid waiver for independent foster care
1789	adolescents.
1790	(1) [For purposes of] <u>As used in</u> this section, an "independent foster care

- adolescent" includes any individual who reached 18 years of age while in the custody of the
 [Division of Child and Family Services, or the Department of Human Services] department if
 the [Division of Child and Family Services] was the primary case manager, or a federally
 recognized Indian tribe.
 - (2) An independent foster care adolescent is eligible, when funds are available, for Medicaid coverage until the individual reaches 21 years of age.
 - (3) Before July 1, 2006, the division shall submit a state Medicaid Plan amendment to [the Center For Medicaid Services] CMS to provide medical coverage for independent foster care adolescents effective fiscal year 2006-07.

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- [26-18-405.] <u>26B-3-202.</u> Waivers to maximize replacement of fee-for-service delivery model -- Cost of mandated program changes.
- (1) The department shall develop a waiver program in the Medicaid program to replace the fee-for-service delivery model with one or more risk-based delivery models.
 - (2) The waiver program shall:
- (a) restructure the program's provider payment provisions to reward health care providers for delivering the most appropriate services at the lowest cost and in ways that, compared to services delivered before implementation of the waiver program, maintain or improve recipient health status;
- (b) restructure the program's cost sharing provisions and other incentives to reward recipients for personal efforts to:
 - (i) maintain or improve their health status; and
 - (ii) use providers that deliver the most appropriate services at the lowest cost;
- (c) identify the evidence-based practices and measures, risk adjustment methodologies, payment systems, funding sources, and other mechanisms necessary to reward providers for delivering the most appropriate services at the lowest cost, including mechanisms that:
- (i) pay providers for packages of services delivered over entire episodes of illness rather than for individual services delivered during each patient encounter; and
- 1820 (ii) reward providers for delivering services that make the most positive contribution to a recipient's health status;
 - (d) limit total annual per-patient-per-month expenditures for services delivered

through fee-for-service arrangements to total annual per-patient-per-month expenditures for services delivered through risk-based arrangements covering similar recipient populations and services; and

- (e) except as provided in Subsection (4), limit the rate of growth in per-patient-per-month General Fund expenditures for the program to the rate of growth in General Fund expenditures for all other programs, when the rate of growth in the General Fund expenditures for all other programs is greater than zero.
- (3) To the extent possible, the department shall operate the waiver program with the input of stakeholder groups representing those who will be affected by the waiver program.
- (4) (a) For purposes of this Subsection (4), "mandated program change" shall be determined by the department in consultation with the Medicaid accountable care organizations, and may include a change to the state Medicaid program that is required by state or federal law, state or federal guidance, policy, or the state Medicaid plan.
- (b) A mandated program change shall be included in the base budget for the Medicaid program for the fiscal year in which the Medicaid program adopted the mandated program change.
- (c) The mandated program change is not subject to the limit on the rate of growth in per-patient-per-month General Fund expenditures for the program established in Subsection (2)(e), until the fiscal year following the fiscal year in which the Medicaid program adopted the mandated program change.
- (5) A managed care organization or a pharmacy benefit manager that provides a pharmacy benefit to an enrollee shall establish a unique group number, payment classification number, or bank identification number for each Medicaid managed care organization plan for which the managed care organization or pharmacy benefit manager provides a pharmacy benefit.

[26-18-405.5.] 26B-3-203. Base budget appropriations for Medicaid accountable care organizations and behavioral health plans -- Forecast of behavioral health services cost.

- (1) As used in this section:
- 1853 (a) "ACO" means an accountable care organization that contracts with the state's Medicaid program for:

1855 (i) physical health services; or

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- 1856 (ii) integrated physical and behavioral health services.
- (b) "Base budget" means the same as that term is defined in legislative rule. 1857
- 1858 (c) "Behavioral health plan" means a managed care or fee for service delivery system that contracts with or is operated by the department to provide behavioral health services to 1859 1860 Medicaid eligible individuals.
- (d) "Behavioral health services" means mental health or substance use treatment or 1861 services. 1862
 - (e) "General Fund growth factor" means the amount determined by dividing the next fiscal year ongoing General Fund revenue estimate by current fiscal year ongoing appropriations from the General Fund.
 - (f) "Next fiscal year ongoing General Fund revenue estimate" means the next fiscal year ongoing General Fund revenue estimate identified by the Executive Appropriations Committee, in accordance with legislative rule, for use by the Office of the Legislative Fiscal Analyst in preparing budget recommendations.
 - (g) "PMPM" means per-member-per-month funding.
 - (2) If the General Fund growth factor is less than 100%, the next fiscal year base budget shall, subject to Subsection (5), include an appropriation to the department in an amount necessary to ensure that the next fiscal year PMPM for ACOs and behavioral health plans equals the current fiscal year PMPM for the ACOs and behavioral health plans multiplied by 100%.
 - (3) If the General Fund growth factor is greater than or equal to 100%, but less than 102%, the next fiscal year base budget shall, subject to Subsection (5), include an appropriation to the department in an amount necessary to ensure that the next fiscal year PMPM for ACOs and behavioral health plans equals the current fiscal year PMPM for the ACOs and behavioral health plans multiplied by the General Fund growth factor.
 - (4) If the General Fund growth factor is greater than or equal to 102%, the next fiscal year base budget shall, subject to Subsection (5), include an appropriation to the department in an amount necessary to ensure that the next fiscal year PMPM for ACOs and behavioral health plans is greater than or equal to the current fiscal year PMPM for the ACOs and behavioral health plans multiplied by 102% and less than or equal to the current fiscal year PMPM for the ACOs and behavioral health plans multiplied by the General Fund growth

1887	factor.
1888	(5) The appropriations provided to the department for behavioral health plans under
1889	this section shall be reduced by the amount contributed by counties in the current fiscal year
1890	for behavioral health plans in accordance with Subsections 17-43-201(5)(k) and
1891	17-43-301(6)(a)(x).

- (6) In order for the department to estimate the impact of Subsections (2) through (4) before identification of the next fiscal year ongoing General Fund revenue estimate, the Governor's Office of Planning and Budget shall, in cooperation with the Office of the Legislative Fiscal Analyst, develop an estimate of ongoing General Fund revenue for the next fiscal year and provide the estimate to the department no later than November 1 of each year.
- 1898 (7) The Office of the Legislative Fiscal Analyst shall include an estimate of the cost of behavioral health services in any state Medicaid funding or savings forecast that is 1899 1900 completed in coordination with the department and the Governor's Office of Planning and 1901 Budget.

[26-18-408.] 26B-3-204. Incentives to appropriately use emergency department services.

- 1905 (1) (a) This section applies to the Medicaid program and to the Utah Children's Health 1906 Insurance Program created in [Chapter 40, Utah Children's Health Insurance Act] Section 1907 26B-3-XXX.
 - (b) As used in this section:

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- (i) "Managed care organization" means a comprehensive full risk managed care delivery system that contracts with the Medicaid program or the Children's Health Insurance Program to deliver health care through a managed care plan.
- (ii) "Managed care plan" means a risk-based delivery service model authorized by Section [26-18-405] 26B-3-XXX and administered by a managed care organization.
 - (iii) "Non-emergent care":
- 1915 (A) means use of the emergency department to receive health care that is 1916 non-emergent as defined by the department by administrative rule adopted in accordance 1917 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the Emergency Medical 1918 Treatment and Active Labor Act; and

- 1919 (B) does not mean the medical services provided to an individual required by the
 1920 Emergency Medical Treatment and Active Labor Act, including services to conduct a medical
 1921 screening examination to determine if the recipient has an emergent or non-emergent
 1922 condition.
 - (iv) "Professional compensation" means payment made for services rendered to a Medicaid recipient by an individual licensed to provide health care services.
 - (v) "Super-utilizer" means a Medicaid recipient who has been identified by the recipient's managed care organization as a person who uses the emergency department excessively, as defined by the managed care organization.
- 1928 (2) (a) A managed care organization may, in accordance with Subsections (2)(b) and 1929 (c):
 - (i) audit emergency department services provided to a recipient enrolled in the managed care plan to determine if non-emergent care was provided to the recipient; and
 - (ii) establish differential payment for emergent and non-emergent care provided in an emergency department.
 - (b) (i) The differential payments under Subsection (2)(a)(ii) do not apply to professional compensation for services rendered in an emergency department.
 - (ii) Except in cases of suspected fraud, waste, and abuse, a managed care organization's audit of payment under Subsection (2)(a)(i) is limited to the 18-month period of time after the date on which the medical services were provided to the recipient. If fraud, waste, or abuse is alleged, the managed care organization's audit of payment under Subsection (2)(a)(i) is limited to three years after the date on which the medical services were provided to the recipient.
 - (c) The audits and differential payments under Subsections (2)(a) and (b) apply to services provided to a recipient on or after July 1, 2015.
 - (3) A managed care organization shall:
 - (a) use the savings under Subsection (2) to maintain and improve access to primary care and urgent care services for all Medicaid or CHIP recipients enrolled in the managed care plan;
 - (b) provide viable alternatives for increasing primary care provider reimbursement rates to incentivize after hours primary care access for recipients; and
 - (c) report to the department on how the managed care organization complied with this

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1951 Subsection (3). 1952 (4) The department may: (a) through administrative rule adopted by the department, develop quality 1953 1954 measurements that evaluate a managed care organization's delivery of: 1955 (i) appropriate emergency department services to recipients enrolled in the managed 1956 care plan; 1957 (ii) expanded primary care and urgent care for recipients enrolled in the managed care plan, with consideration of the managed care organization's: 1958 1959 (A) delivery of primary care, urgent care, and after hours care through means other 1960 than the emergency department; (B) recipient access to primary care providers and community health centers including 1961 1962 evening and weekend access; and 1963 (C) other innovations for expanding access to primary care; and 1964 (iii) quality of care for the managed care plan members; 1965 (b) compare the quality measures developed under Subsection (4)(a) for each 1966 managed care organization; and 1967 (c) develop, by administrative rule, an algorithm to determine assignment of new, 1968 unassigned recipients to specific managed care plans based on the plan's performance in 1969 relation to the quality measures developed pursuant to Subsection (4)(a). 1970 1971 [26-18-409.] 26B-3-205. Long-term care insurance partnership. 1972 (1) As used in this section: (a) "Qualified long-term care insurance contract" is as defined in 26 U.S.C. Sec. 1973 1974 7702B(b). 1975 (b) "Qualified long-term care insurance partnership" is as defined in 42 U.S.C. Sec. 1976 1396p(b)(1)(C)(iii). 1977 (c) "State plan amendment" means an amendment to the state Medicaid plan drafted by the department in compliance with this section. 1978 1979 (2) No later than July 1, 2014, the department shall seek federal approval of a state 1980 plan amendment that creates a qualified long-term care insurance partnership.

relating to qualified long-term care insurance partnerships and qualified long-term care

(3) The department may make rules to comply with federal laws and regulations

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1983	insurance contracts.
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1985	[26-18-410.] <u>26B-3-206.</u> Medicaid waiver for children with disabilities and
1986	complex medical needs.
1987	(1) As used in this section:
1988	(a) "Additional eligibility criteria" means the additional eligibility criteria set by the
1989	department under Subsection (4)(e).
1990	(b) "Complex medical condition" means a physical condition of an individual that:
1991	(i) results in severe functional limitations for the individual; and
1992	(ii) is likely to:
1993	(A) last at least 12 months; or
1994	(B) result in death.
1995	(c) "Program" means the program for children with complex medical conditions
1996	created in Subsection (3).
1997	(d) "Qualified child" means a child who:
1998	(i) is less than 19 years old;
1999	(ii) is diagnosed with a complex medical condition;
2000	(iii) has a condition that meets the definition of disability in 42 U.S.C. Sec. 12102; and
2001	(iv) meets the additional eligibility criteria.
2002	(2) The department shall apply for a Medicaid home and community-based waiver
2003	with CMS to implement, within the state Medicaid program, the program described in
2004	Subsection (3).
2005	(3) If the waiver described in Subsection (2) is approved, the department shall offer a
2006	program that:
2007	(a) as funding permits, provides treatment for qualified children;
2008	(b) if approved by CMS and as funding permits, beginning in fiscal year 2023 provides
2009	on an ongoing basis treatment for 130 more qualified children than the program provided
2010	treatment for during fiscal year 2022; and
2011	(c) accepts applications for the program on an ongoing basis.
2012	(i) requires periodic reevaluations of an enrolled child's eligibility and other applicants
2013	or eligible children waiting for services in the program based on the additional eligibility
2014	criteria; and

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2015	(ii) at the time of reevaluation, allows the department to disenroll a child based on the
2016	prioritization described in Subsection (4)(a) and additional eligibility criteria.
2017	(4) The department shall:
2018	(a) establish by rule made in accordance with Title 63G, Chapter 3, Utah
2019	Administrative Rulemaking Act, criteria to prioritize qualified children's participation in the
2020	program based on the following factors, in the following priority order:
2021	(i) the complexity of a qualified child's medical condition; and
2022	(ii) the financial needs of the qualified child and the qualified child's family;
2023	(b) convene a public process to determine the benefits and services to offer a
2024	qualified child under the program;
2025	(c) evaluate, on an ongoing basis, the cost and effectiveness of the program;
2026	(d) if funding for the program is reduced, develop an evaluation process to reduce the
2027	number of children served based on the participation criteria established under Subsection
2028	(4)(a); and
2029	(e) establish, by rule made in accordance with Title 63G, Chapter 3, Utah
2030	Administrative Rulemaking Act, additional eligibility criteria based on the factors described in
2031	Subsections (4)(a)(i) and (ii).
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2033	[26-18-411.] <u>26B-3-207.</u> Health coverage improvement program Eligibility
2034	Annual report Expansion of eligibility for adults with dependent children.
2035	(1) As used in this section:
2036	(a) "Adult in the expansion population" means an individual who:
2037	(i) is described in 42 U.S.C. Sec. 1396a(a)(10)(A)(i)(VIII): and

- scribed in 42 0.5.C. Sec. 1396a(a)(10)(A)(i)(Viii); and
- 2038 (ii) is not otherwise eligible for Medicaid as a mandatory categorically needy individual. 2039
 - (b) "Enhancement waiver program" means the Primary Care Network enhancement waiver program described in Section 26-18-416.
- (c) "Federal poverty level" means the poverty guidelines established by the Secretary 2042 2043 of the United States Department of Health and Human Services under 42 U.S.C. Sec. 9909(2). 2044
- 2045 (d) "Health coverage improvement program" means the health coverage improvement program described in Subsections (3) through (10). 2046

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2047 (e) "Homeless":

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- 2048 (i) means an individual who is chronically homeless, as determined by the 2049 department; and
- 2050 (ii) includes someone who was chronically homeless and is currently living in supported housing for the chronically homeless.
 - (f) "Income eligibility ceiling" means the percent of federal poverty level:
- 2053 (i) established by the state in an appropriations act adopted pursuant to Title 63J, 2054 Chapter 1, Budgetary Procedures Act; and
- 2055 (ii) under which an individual may qualify for Medicaid coverage in accordance with 2056 this section.
 - (g) "Targeted adult Medicaid program" means the program implemented by the department under Subsections (5) through (7).
 - (2) Beginning July 1, 2016, the department shall amend the state Medicaid plan to allow temporary residential treatment for substance abuse, for the traditional Medicaid population, in a short term, non-institutional, 24-hour facility, without a bed capacity limit that provides rehabilitation services that are medically necessary and in accordance with an individualized treatment plan, as approved by CMS and as long as the county makes the required match under Section 17-43-201.
 - (3) Beginning July 1, 2016, the department shall amend the state Medicaid plan to increase the income eligibility ceiling to a percentage of the federal poverty level designated by the department, based on appropriations for the program, for an individual with a dependent child.
 - (4) Before July 1, 2016, the division shall submit to CMS a request for waivers, or an amendment of existing waivers, from federal statutory and regulatory law necessary for the state to implement the health coverage improvement program in the Medicaid program in accordance with this section.
 - (5) (a) An adult in the expansion population is eligible for Medicaid if the adult meets the income eligibility and other criteria established under Subsection (6).
 - (b) An adult who qualifies under Subsection (6) shall receive Medicaid coverage:
 - (i) through the traditional fee for service Medicaid model in counties without Medicaid accountable care organizations or the state's Medicaid accountable care organization delivery system, where implemented and subject to Section [26-18-428] 26B-3-224;

- 2079 (ii) except as provided in Subsection (5)(b)(iii), for behavioral health, through the 2080 counties in accordance with Sections 17-43-201 and 17-43-301;
 - (iii) that, subject to Section [26-18-428] 26B-3-224, integrates behavioral health services and physical health services with Medicaid accountable care organizations in select geographic areas of the state that choose an integrated model; and
 - (iv) that permits temporary residential treatment for substance abuse in a short term. non-institutional, 24-hour facility, without a bed capacity limit, as approved by CMS, that provides rehabilitation services that are medically necessary and in accordance with an individualized treatment plan.
- 2088 (6) (a) An individual is eligible for the health coverage improvement program under Subsection (5) if: 2089
 - (i) at the time of enrollment, the individual's annual income is below the income eligibility ceiling established by the state under Subsection (1)(f); and
 - (ii) the individual meets the eligibility criteria established by the department under Subsection (6)(b).
 - (b) Based on available funding and approval from CMS, the department shall select the criteria for an individual to qualify for the Medicaid program under Subsection (6)(a)(ii), based on the following priority:
 - (i) a chronically homeless individual;

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- (ii) if funding is available, an individual:
- (A) involved in the justice system through probation, parole, or court ordered treatment; and
- (B) in need of substance abuse treatment or mental health treatment, as determined by the department; or
- (iii) if funding is available, an individual in need of substance abuse treatment or mental health treatment, as determined by the department.
- (c) An individual who qualifies for Medicaid coverage under Subsections (6)(a) and (b) may remain on the Medicaid program for a 12-month certification period as defined by the department. Eligibility changes made by the department under Subsection (1)(f) or (6)(b) shall not apply to an individual during the 12-month certification period.
- 2109 (7) The state may request a modification of the income eligibility ceiling and other 2110 eligibility criteria under Subsection (6) each fiscal year based on projected enrollment, costs

2111 to the state, and the state budget.

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- 2112 (8) Before September 30 of each year, the department shall report to the Health and Human Services Interim Committee and to the Executive Appropriations Committee: 2113
 - (a) the number of individuals who enrolled in Medicaid under Subsection (6):
- 2115 (b) the state cost of providing Medicaid to individuals enrolled under Subsection (6); 2116 and
- 2117 (c) recommendations for adjusting the income eligibility ceiling under Subsection (7), 2118 and other eligibility criteria under Subsection (6), for the upcoming fiscal year.
 - (9) The current Medicaid program and the health coverage improvement program, when implemented, shall coordinate with a state prison or county jail to expedite Medicaid enrollment for an individual who is released from custody and was eligible for or enrolled in Medicaid before incarceration.
 - (10) Notwithstanding Sections 17-43-201 and 17-43-301, a county does not have to provide matching funds to the state for the cost of providing Medicaid services to newly enrolled individuals who qualify for Medicaid coverage under the health coverage improvement program under Subsection (6).
 - (11) If the enhancement waiver program is implemented, the department:
 - (a) may not accept any new enrollees into the health coverage improvement program after the day on which the enhancement waiver program is implemented:
 - (b) shall transition all individuals who are enrolled in the health coverage improvement program into the enhancement waiver program;
 - (c) shall suspend the health coverage improvement program within one year after the day on which the enhancement waiver program is implemented;
 - (d) shall, within one year after the day on which the enhancement waiver program is implemented, use all appropriations for the health coverage improvement program to implement the enhancement waiver program; and
 - (e) shall work with CMS to maintain any waiver for the health coverage improvement program while the health coverage improvement program is suspended under Subsection (11)(c).
- 2140 (12) If, after the enhancement waiver program takes effect, the enhancement waiver 2141 program is repealed or suspended by either the state or federal government, the department 2142 shall reinstate the health coverage improvement program and continue to accept new

2143	enrollees into the health coverage improvement program in accordance with the provisions of
2144	this section.

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- [26-18-413.] <u>26B-3-208.</u> Medicaid waiver for delivery of adult dental services.
- (1) (a) Before June 30, 2016, the department shall ask CMS to grant waivers from federal statutory and regulatory law necessary for the Medicaid program to provide dental services in the manner described in Subsection (2)(a).
- 2150 (b) Before June 30, 2018, the department shall submit to CMS a request for waivers, 2151 or an amendment of existing waivers, from federal law necessary for the state to provide 2152 dental services, in accordance with Subsections (2)(b)(i) and (d) through (g), to an individual 2153 described in Subsection (2)(b)(i).
- 2154 (c) Before June 30, 2019, the department shall submit to the Centers for Medicare 2155 and Medicaid Services a request for waivers, or an amendment to existing waivers, from 2156 federal law necessary for the state to:
- 2157 (i) provide dental services, in accordance with Subsections (2)(b)(ii) and (d) through 2158 (g) to an individual described in Subsection (2)(b)(ii); and
 - (ii) provide the services described in Subsection (2)(h).
- 2160 (2) (a) To the extent funded, the department shall provide services to only blind or 2161 disabled individuals, as defined in 42 U.S.C. Sec. 1382c(a)(1), who are 18 years old or older 2162 and eligible for the program.
 - (b) Notwithstanding Subsection (2)(a):
 - (i) if a waiver is approved under Subsection (1)(b), the department shall provide dental services to an individual who:
- 2166 (A) qualifies for the health coverage improvement program described in Section 2167 26-18-411; and
- 2168 (B) is receiving treatment in a substance abuse treatment program, as defined in
 2169 Section [62A-2-101] 26B-2-101, licensed under [Title 62A, Chapter 2, Licensure of
 2170 Programs and Facilities] Chapter 2, Part 1, Human Services Programs and Facilities; and
- 2171 (ii) if a waiver is approved under Subsection (1)(c)(i), the department shall provide 2172 dental services to an individual who is an aged individual as defined in 42 U.S.C. Sec. 2173 1382c(a)(1).
- (c) To the extent possible, services to individuals described in Subsection (2)(a) shall

- be provided through the University of Utah School of Dentistry and the University of Utah School of Dentistry's associated statewide network.
- 2177 (d) The department shall provide the services to individuals described in Subsection 2178 (2)(b):
 - (i) by contracting with an entity that:

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- (A) has demonstrated experience working with individuals who are being treated for both a substance use disorder and a major oral health disease;
- (B) operates a program, targeted at the individuals described in Subsection (2)(b), that has demonstrated, through a peer-reviewed evaluation, the effectiveness of providing dental treatment to those individuals described in Subsection (2)(b);
 - (C) is willing to pay for an amount equal to the program's non-federal share of the cost of providing dental services to the population described in Subsection (2)(b); and
 - (D) is willing to pay all state costs associated with applying for the waiver described in Subsection (1)(b) and administering the program described in Subsection (2)(b); and
 - (ii) through a fee-for-service payment model.
 - (e) The entity that receives the contract under Subsection (2)(d)(i) shall cover all state costs of the program described in Subsection (2)(b).
 - (f) Each fiscal year, the University of Utah School of Dentistry shall, in compliance with state and federal regulations regarding intergovernmental transfers, transfer funds to the program in an amount equal to the program's non-federal share of the cost of providing services under this section through the school during the fiscal year.
 - (g) If a waiver is approved under Subsection (1)(c)(ii), the department shall provide coverage for porcelain and porcelain-to-metal crowns if the services are provided:
 - (i) to an individual who qualifies for dental services under Subsection (2)(b); and
 - (ii) by an entity that covers all state costs of:
 - (A) providing the coverage described in this Subsection (2)(h); and
- (B) applying for the waiver described in Subsection (1)(c).
- (h) Where possible, the department shall ensure that services described in Subsection (2)(a) that are not provided by the University of Utah School of Dentistry or the University of Utah School of Dentistry's associated network are provided:
 - (i) through fee for service reimbursement until July 1, 2018; and
 - (ii) after July 1, 2018, through the method of reimbursement used by the division for

2207	Medicaid dental benefits.
2208	(i) Subject to appropriations by the Legislature, and as determined by the department

- the scope, amount, duration, and frequency of services may be limited.
- 2210 (3) (a) If the waivers requested under Subsection (1)(a) are granted, the Medicaid 2211 program shall begin providing dental services in the manner described in Subsection (2) no 2212 later than July 1, 2017.
- 2213 (b) If the waivers requested under Subsection (1)(b) are granted, the Medicaid 2214 program shall begin providing dental services to the population described in Subsection 2215 (2)(b) within 90 days from the day on which the waivers are granted.
- (c) If the waivers requested under Subsection (1)(c)(i) are granted, the Medicaid program shall begin providing dental services to the population described in Subsection (2)(b)(ii) within 90 days after the day on which the waivers are granted.
- 2219 (4) If the federal share of the cost of providing dental services under this section will 2220 be less than 65% during any portion of the next fiscal year, the Medicaid program shall cease 2221 providing dental services under this section no later than the end of the current fiscal year.

[26-18-414.] <u>26B-3-209.</u> Medicaid long-term support services housing coordinator.

- (1) There is created within the Medicaid program a full-time-equivalent position of Medicaid long-term support services housing coordinator.
- (2) The coordinator shall help Medicaid recipients receive long-term support services in a home or other community-based setting rather than in a nursing home or other institutional setting by:
- (a) working with municipalities, counties, the Housing and Community Development Division within the Department of Workforce Services, and others to identify community-based settings available to recipients;
- (b) working with the same entities to promote the development, construction, and availability of additional community-based settings;
- (c) training Medicaid case managers and support coordinators on how to help Medicaid recipients move from an institutional setting to a community-based setting; and
 - (d) performing other related duties.

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2239	[26-18-415.] <u>26B-3-210.</u> Medicaid waiver expansion.
2240	(1) As used in this section:
2241	(a) "Federal poverty level" means the same as that term is defined in Section
2242	[26-18-411] <u>26B-3-207</u> .
2243	(b) "Medicaid waiver expansion" means an expansion of the Medicaid program in
2244	accordance with this section.
2245	(2) (a) Before January 1, 2019, the department shall apply to CMS for approval of a
2246	waiver or state plan amendment to implement the Medicaid waiver expansion.
2247	(b) The Medicaid waiver expansion shall:
2248	(i) expand Medicaid coverage to eligible individuals whose income is below 95% of
2249	the federal poverty level;
2250	(ii) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(y) for
2251	enrolling an individual in the Medicaid program;
2252	(iii) provide Medicaid benefits through the state's Medicaid accountable care
2253	organizations in areas where a Medicaid accountable care organization is implemented;
2254	(iv) integrate the delivery of behavioral health services and physical health services
2255	with Medicaid accountable care organizations in select geographic areas of the state that
2256	choose an integrated model;
2257	(v) include a path to self-sufficiency, including work activities as defined in 42 U.S.C.
2258	Sec. 607(d), for qualified adults;
2259	(vi) require an individual who is offered a private health benefit plan by an employer to
2260	enroll in the employer's health plan;
2261	(vii) sunset in accordance with Subsection (5)(a); and
2262	(viii) permit the state to close enrollment in the Medicaid waiver expansion if the
2263	department has insufficient funding to provide services to additional eligible individuals.
2264	(3) If the Medicaid waiver described in Subsection (2)(a) is approved, the department
2265	may only pay the state portion of costs for the Medicaid waiver expansion with appropriations
2266	from:
2267	(a) the Medicaid Expansion Fund, created in Section [26-36b-208] <u>26B-X-XXX</u> ;
2268	(b) county contributions to the non-federal share of Medicaid expenditures; and
2269	(c) any other contributions, funds, or transfers from a non-state agency for Medicaid

expenditures.

- 2271 (4) (a) In consultation with the department, Medicaid accountable care organizations 2272 and counties that elect to integrate care under Subsection (2)(b)(iv) shall collaborate on 2273 enrollment, engagement of patients, and coordination of services.
 - (b) As part of the provision described in Subsection (2)(b)(iv), the department shall apply for a waiver to permit the creation of an integrated delivery system:
 - (i) for any geographic area that expresses interest in integrating the delivery of services under Subsection (2)(b)(iv); and
 - (ii) in which the department:

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- (A) may permit a local mental health authority to integrate the delivery of behavioral health services and physical health services;
- (B) may permit a county, local mental health authority, or Medicaid accountable care organization to integrate the delivery of behavioral health services and physical health services to select groups within the population that are newly eligible under the Medicaid waiver expansion; and
- (C) may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to integrate payments for behavioral health services and physical health services to plans or providers.
- (5) (a) If federal financial participation for the Medicaid waiver expansion is reduced below 90%, the authority of the department to implement the Medicaid waiver expansion shall sunset no later than the next July 1 after the date on which the federal financial participation is reduced.
- (b) The department shall close the program to new enrollment if the cost of the Medicaid waiver expansion is projected to exceed the appropriations for the fiscal year that are authorized by the Legislature through an appropriations act adopted in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.
- (6) If the Medicaid waiver expansion is approved by CMS, the department shall report to the Social Services Appropriations Subcommittee on or before November 1 of each year that the Medicaid waiver expansion is operational:
 - (a) the number of individuals who enrolled in the Medicaid waiver program;
- (b) costs to the state for the Medicaid waiver program;
 - (c) estimated costs for the current and following state fiscal year: and
 - (d) recommendations to control costs of the Medicaid waiver expansion.

2303	[26-18-416.] <u>26B-3-211.</u>	Primary Care Network enhancement waiver program.
2304	(1) As used in this section	:

(1) As used in this section:

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- 2305 (a) "Enhancement waiver program" means the Primary Care Network enhancement waiver program described in this section. 2306
- 2307 (b) "Federal poverty level" means the poverty guidelines established by the secretary 2308 of the United States Department of Health and Human Services under 42 U.S.C. Sec. 2309 9902(2).
- 2310 (c) "Health coverage improvement program" means the same as that term is defined 2311 in Section 26-18-411.
 - (d) "Income eligibility ceiling" means the percentage of federal poverty level:
- 2313 (i) established by the Legislature in an appropriations act adopted pursuant to Title 2314 63J, Chapter 1, Budgetary Procedures Act; and
- 2315 (ii) under which an individual may qualify for coverage in the enhancement waiver 2316 program in accordance with this section.
- 2317 (e) "Optional population" means the optional expansion population under PPACA if 2318 the expansion provides coverage for individuals at or above 95% of the federal poverty level.
- 2319 (f) "Primary Care Network" means the state Primary Care Network program created 2320 by the Medicaid primary care network demonstration waiver obtained under Section [26-18-3] 2321 26B-3-108
 - (2) The department shall continue to implement the Primary Care Network program for qualified individuals under the Primary Care Network program.
 - (3) (a) The division shall apply for a Medicaid waiver or a state plan amendment with CMS to implement, within the state Medicaid program, the enhancement waiver program described in this section within six months after the day on which:
 - (i) the division receives a notice from CMS that the waiver for the Medicaid waiver expansion submitted under Section [26-18-415] 26B-3-210, Medicaid waiver expansion, will not be approved; or
- 2330 (ii) the division withdraws the waiver for the Medicaid waiver expansion submitted under Section [26-18-415] 26B-3-210, Medicaid waiver expansion. 2331
- 2332 (b) The division may not apply for a waiver under Subsection (3)(a) while a waiver 2333 request under Section [26-18-415] 26B-3-210, Medicaid waiver expansion, is pending with 2334 CMS.

- Working Draft -- For Discussion Purposes Only 2335 (4) An individual who is eligible for the enhancement waiver program may receive the 2336 following benefits under the enhancement waiver program: (a) the benefits offered under the Primary Care Network program; 2337 2338 (b) diagnostic testing and procedures: 2339 (c) medical specialty care; 2340 (d) inpatient hospital services; 2341 (e) outpatient hospital services; 2342 (f) outpatient behavioral health care, including outpatient substance abuse care; and 2343 (g) for an individual who qualifies for the health coverage improvement program, as 2344 approved by CMS, temporary residential treatment for substance abuse in a short term, 2345 non-institutional, 24-hour facility, without a bed capacity limit, that provides rehabilitation 2346 services that are medically necessary and in accordance with an individualized treatment 2347 plan. 2348 (5) An individual is eligible for the enhancement waiver program if, at the time of enrollment: 2349 2350 (a) the individual is qualified to enroll in the Primary Care Network or the health 2351 coverage improvement program;
- (b) the individual's annual income is below the income eligibility ceiling established by
 the Legislature under Subsection (1)(d); and
 - (c) the individual meets the eligibility criteria established by the department under Subsection (6).
 - (6) (a) Based on available funding and approval from CMS, the department shall determine the criteria for an individual to qualify for the enhancement waiver program, based on the following priority:
 - (i) adults in the expansion population, as defined in Section [26-18-411] <u>26B-3-207</u>, who qualify for the health coverage improvement program;
 - (ii) adults with dependent children who qualify for the health coverage improvement program under Subsection [26-18-411] 26B-3-207 (3);
- 2363 (iii) adults with dependent children who do not qualify for the health coverage 2364 improvement program; and
 - (iv) if funding is available, adults without dependent children.
 - (b) The number of individuals enrolled in the enhancement waiver program may not

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exceed 105% of the number of individuals who were enrolled in the Primary Care Network on 2367 2368 December 31, 2017.

- 2369 (c) The department may only use appropriations from the Medicaid Expansion Fund 2370 created in Section [26-36b-208] 26B-1-XXX to fund the state portion of the enhancement 2371 waiver program.
 - (7) The department may request a modification of the income eligibility ceiling and the eligibility criteria under Subsection (6) from CMS each fiscal year based on enrollment in the enhancement waiver program, projected enrollment in the enhancement waiver program. costs to the state, and the state budget.
 - (8) The department may implement the enhancement waiver program by contracting with Medicaid accountable care organizations to administer the enhancement waiver program.
 - (9) In accordance with Subsections [26-18-411] 26B-3-207 (11) and (12), the department may use funds that have been appropriated for the health coverage improvement program to implement the enhancement waiver program.
 - (10) If the department expands the state Medicaid program to the optional population, the department:
 - (a) except as provided in Subsection (11), may not accept any new enrollees into the enhancement waiver program after the day on which the expansion to the optional population is effective;
 - (b) shall suspend the enhancement waiver program within one year after the day on which the expansion to the optional population is effective; and
 - (c) shall work with CMS to maintain the waiver for the enhancement waiver program submitted under Subsection (3) while the enhancement waiver program is suspended under Subsection (10)(b).
 - (11) If, after the expansion to the optional population described in Subsection (10) takes effect, the expansion to the optional population is repealed by either the state or the federal government, the department shall reinstate the enhancement waiver program and continue to accept new enrollees into the enhancement waiver program in accordance with the provisions of this section.

[26-18-417.] 26B-3-212. Limited family planning services for low-income 2398

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2399	individuals.
2400	(1) As used in this section:
2401	(a) (i) "Family planning services" means family planning services that are provided
2402	under the state Medicaid program, including:
2403	(A) sexual health education and family planning counseling; and
2404	(B) other medical diagnosis, treatment, or preventative care routinely provided as part
2405	of a family planning service visit.
2406	(ii) "Family planning services" do not include an abortion, as that term is defined in
2407	Section 76-7-301.
2408	(b) "Low-income individual" means an individual who:
2409	(i) has an income level that is equal to or below 95% of the federal poverty level; and
2410	(ii) does not qualify for full coverage under the Medicaid program.
2411	(2) Before July 1, 2018, the division shall apply for a Medicaid waiver or a state plan
2412	amendment with CMS to:
2413	(a) offer a program that provides family planning services to low-income individuals;
2414	and
2415	(b) receive a federal match rate of 90% of state expenditures for family planning
2416	services provided under the waiver or state plan amendment.
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2418	[26-18-418.] <u>26B-3-213.</u> Medicaid waiver for mental health crisis lines and
2419	mobile crisis outreach teams.
2420	(1) As used in this section:
2421	(a) "Local mental health crisis line" means the same as that term is defined in Section
2422	[62A-15-1301] <u>26B-X-XXX</u> .
2423	(b) "Mental health crisis" means:
2424	(i) a mental health condition that manifests itself in an individual by symptoms of
2425	sufficient severity that a prudent layperson who possesses an average knowledge of mental
2426	health issues could reasonably expect the absence of immediate attention or intervention to
2427	result in:
2428	(A) serious danger to the individual's health or well-being; or
2429	(B) a danger to the health or well-being of others; or
2430	(ii) a mental health condition that, in the opinion of a mental health therapist or the

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therapist's designee, requires direct professional observation or the intervention of a mental health therapist.

- (c) (i) "Mental health crisis services" means direct mental health services and on-site intervention that a mobile crisis outreach team provides to an individual suffering from a mental health crisis, including the provision of safety and care plans, prolonged mental health services for up to 90 days, and referrals to other community resources.
 - (ii) "Mental health crisis services" includes:
 - (A) local mental health crisis lines; and

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- (B) the statewide mental health crisis line.
- 2440 (d) "Mental health therapist" means the same as that term is defined in Section 2441 58-60-102.
 - (e) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and mental health professionals that, in coordination with local law enforcement and emergency medical service personnel, provides mental health crisis services.
 - (f) "Statewide mental health crisis line" means the same as that term is defined in Section [62A-15-1301] 26B-X-XXX.
 - (2) In consultation with the Department of Human Services and the Behavioral Health Crisis Response Commission created in Section 63C-18-202, the department shall develop a proposal to amend the state Medicaid plan to include mental health crisis services, including the statewide mental health crisis line, local mental health crisis lines, and mobile crisis outreach teams.
 - (3) By January 1, 2019, the department shall apply for a Medicaid waiver with CMS, if necessary to implement, within the state Medicaid program, the mental health crisis services described in Subsection (2).

[26-18-419.] <u>26B-3-214.</u> Medicaid waiver for coverage of mental health services in schools.

- (1) As used in this section, "local education agency" means:
- 2459 (a) a school district;
- 2460 (b) a charter school; or
- (c) the Utah Schools for the Deaf and the Blind.
 - (2) In consultation with the Department of Human Services and the State Board of

Education, the department shall develop a proposal to allow the state Medicaid program to 2463 2464 reimburse a local education agency, a local mental health authority, or a private provider for covered mental health services provided: 2465 2466 (a) in accordance with Section 53E-9-203; and 2467 (b) (i) at a local education agency building or facility; or 2468 (ii) by an employee or contractor of a local education agency. 2469 (3) Before January 1, 2020, the department shall apply to CMS for a state plan amendment to implement the coverage described in Subsection (2). 2470 2471 2472 [26-18-420.] 26B-3-215. Coverage for in vitro fertilization and genetic testing. 2473 (1) As used in this section: 2474 (a) "Qualified condition" means: (i) cystic fibrosis; 2475 2476 (ii) spinal muscular atrophy; 2477 (iii) Morquio Syndrome; (iv) myotonic dystrophy; or 2478 (v) sickle cell anemia. 2479 2480 (b) "Qualified enrollee" means an individual who: (i) is enrolled in the Medicaid program; 2481 2482 (ii) has been diagnosed by a physician as having a genetic trait associated with a 2483 qualified condition; and 2484 (iii) intends to get pregnant with a partner who is diagnosed by a physician as having 2485 a genetic trait associated with the same qualified condition as the individual. 2486 (2) Before January 1, 2021, the department shall apply for a Medicaid waiver or a state plan amendment with the Centers for Medicare and Medicaid Services within the United 2487 States Department of Health and Human Services to implement the coverage described in 2488 2489 Subsection (3). (3) If the waiver described in Subsection (2) is approved, the Medicaid program shall 2490 provide coverage to a qualified enrollee for:

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under Subsection (3)(a).

(a) in vitro fertilization services; and

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(b) genetic testing of a qualified enrollee who receives in vitro fertilization services

2495	(4) The Medicaid program may not provide the coverage described in Subsection (3)
2496	before the later of:
2497	(a) the day on which the waiver described in Subsection (2) is approved; and
2498	(b) January 1, 2021.
2499	(5) Before November 1, 2022, and before November 1 of every third year thereafter,
2500	the department shall:
2501	(a) calculate the change in state spending attributable to the coverage under this
2502	section; and
2503	(b) report the amount described in Subsection (4)(a) to the Health and Human
2504	Services Interim Committee and the Social Services Appropriations Subcommittee.
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2506	[26-18-420.1.] <u>26B-3-216.</u> Medicaid waiver for fertility preservation services.
2507	(1) As used in this section:
2508	(a) "latrogenic infertility" means an impairment of fertility or reproductive functioning
2509	caused by surgery, chemotherapy, radiation, or other medical treatment.
2510	(b) "Physician" means an individual licensed to practice under Title 58, Chapter 67,
2511	Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
2512	(c) "Qualified enrollee" means an individual who:
2513	(i) is enrolled in the Medicaid program;
2514	(ii) has been diagnosed with a form of cancer by a physician; and
2515	(iii) needs treatment for that cancer that may cause a substantial risk of sterility or
2516	iatrogenic infertility, including surgery, radiation, or chemotherapy.
2517	(d) "Standard fertility preservation service" means a fertility preservation procedure
2518	and service that:
2519	(i) is not considered experimental or investigational by the American Society for
2520	Reproductive Medicine or the American Society of Clinical Oncology; and
2521	(ii) is consistent with established medical practices or professional guidelines
2522	published by the American Society for Reproductive Medicine or the American Society of
2523	Clinical Oncology, including:
2524	(A) sperm banking;
2525	(B) oocyte banking;
2526	(C) embryo banking;

2527	(D) banking of reproductive tissues; and	
2528	(E) storage of reproductive cells and tissues.	
2529	(2) Before January 1, 2022, the department shall apply for a Medicaid wain	ver or a
2530	state plan amendment with CMS to implement the coverage described in Subsect	ion (3).
2531	(3) If the waiver or state plan amendment described in Subsection (2) is ap	proved,
2532	the Medicaid program shall provide coverage to a qualified enrollee for standard f	ertility
2533	preservation services.	
2534	(4) The Medicaid program may not provide the coverage described in Sub-	section (3)
2535	before the later of:	
2536	(a) the day on which the waiver described in Subsection (2) is approved; a	nd
2537	(b) January 1, 2023.	
2538	(5) Before November 1, 2023, and before November 1 of each third year a	ıfter 2023,
2539	the department shall:	
2540	(a) calculate the change in state spending attributable to the coverage des	cribed in
2541	this section; and	
2542	(b) report the amount described in Subsection (5)(a) to the Health and Hur	nan
2543	Services Interim Committee and the Social Services Appropriations Subcommittee	e.
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2545	[26-18-421.] <u>26B-3-217.</u> Medicaid waiver for coverage of qualified in	mates
2546	leaving prison or jail.	
2547	(1) As used in this section:	
2548	(a) "Correctional facility" means:	
2549	(i) a county jail;	
2550	(ii) the Department of Corrections, created in Section 64-13-2; or	
2551	(iii) a prison, penitentiary, or other institution operated by or under contract	with the
2552	Department of Corrections for the confinement of an offender, as defined in Section	on 64-13-1.
2553	(b) "Qualified inmate" means an individual who:	
2554	(i) is incarcerated in a correctional facility; and	
2555	(ii) has:	
2556	(A) a chronic physical or behavioral health condition;	
2557	(B) a mental illness, as defined in Section [62A-15-602] 26B-4-301; or	
2558	(C) an opioid use disorder.	

- 2559 (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan 2560 amendment with CMS to offer a program to provide Medicaid coverage to a qualified inmate 2561 for up to 30 days immediately before the day on which the qualified inmate is released from a 2562 correctional facility.
- 2563 (3) If the waiver or state plan amendment described in Subsection (2) is approved, 2564 the department shall report to the Health and Human Services Interim Committee each year 2565 before November 30 while the waiver or state plan amendment is in effect regarding:
 - (a) the number of qualified inmates served under the program;
- (b) the cost of the program; and

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- (c) the effectiveness of the program, including:
- 2569 (i) any reduction in the number of emergency room visits or hospitalizations by 2570 inmates after release from a correctional facility;
 - (ii) any reduction in the number of inmates undergoing inpatient treatment after release from a correctional facility;
 - (iii) any reduction in overdose rates and deaths of inmates after release from a correctional facility; and
 - (iv) any other costs or benefits as a result of the program.
- 2576 (4) If the waiver or state plan amendment described in Subsection (2) is approved, a county that is responsible for the cost of a qualified inmate's medical care shall provide the required matching funds to the state for:
- 2579 (a) any costs to enroll the qualified inmate for the Medicaid coverage described in Subsection (2);
- 2581 (b) any administrative fees for the Medicaid coverage described in Subsection (2); 2582 and
- 2583 (c) the Medicaid coverage that is provided to the qualified inmate under Subsection 2584 (2).

2586 [26-18-422.] 26B-3-218. Medicaid waiver for inpatient care in an institution for mental diseases.

- (1) As used in this section, "institution for mental diseases" means the same as that term is defined in 42 C.F.R. Sec. 435.1010.
 - (2) Before August 1, 2020, the division shall apply for a Medicaid waiver or a state

plan amendment with CMS to offer a program that provides reimbursement for mental health services that are provided:

- (a) in an institution for mental diseases that includes more than 16 beds; and
- 2594 (b) to an individual who receives mental health services in an institution for mental diseases for a period of more than 15 days in a calendar month.
 - (3) If the waiver or state plan amendment described in Subsection (2) is approved, the department shall:
 - (a) [coordinate with the Department of Human Services to] develop and offer the program described in Subsection (2); and
 - (b) submit to the Health and Human Services Interim Committee and the Social Services Appropriations Subcommittee any report that the department submits to CMS that relates to the budget neutrality, independent waiver evaluation, or performance metrics of the program described in Subsection (2), within 15 days after the day on which the report is submitted to CMS.
 - (4) Notwithstanding Sections 17-43-201 and 17-43-301, if the waiver or state plan amendment described in Subsection (2) is approved, a county does not have to provide matching funds to the state for the mental health services described in Subsection (2) that are provided to an individual who qualifies for Medicaid coverage under Section [26-18-3.9 or Section 26-18-411] 26B-3-113 or 26B-3-207.

[26-18-423.] 26B-3-219. Reimbursement for crisis management services
provided in a behavioral health receiving center -- Integration of payment for physical
health services.

(1) As used in this section:

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- 2615 (a) "Accountable care organization" means the same as that term is defined in Section [26-18-408] 26B-3-204.
- 2617 (b) "Behavioral health receiving center" means the same as that term is defined in Section [62A-15-118] 26B-4-114.
- 2619 (c) "Crisis management services" means behavioral health services provided to an individual who is experiencing a mental health crisis.
- 2621 (d) "Managed care organization" means the same as that term is defined in 42 C.F.R. Sec. 438.2.

- (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or state plan 2623 amendment with CMS to offer a program that provides reimbursement through a bundled 2624 daily rate for crisis management services that are delivered to an individual during the 2625 individual's stay at a behavioral health receiving center. 2626
 - (3) If the waiver or state plan amendment described in Subsection (2) is approved. the department shall:
 - (a) implement the program described in Subsection (2); and
 - (b) require a managed care organization that contracts with the state's Medicaid program for behavioral health services or integrated health services to provide coverage for crisis management services that are delivered to an individual during the individual's stay at a behavioral health receiving center.
 - (4) (a) The department may elect to integrate payment for physical health services provided in a behavioral health receiving center.
 - (b) In determining whether to integrate payment under Subsection (4)(a), the department shall consult with accountable care organizations and counties in the state.

2639 [26-18-424.] 26B-3-220. Crisis services -- Reimbursement.

The Department shall submit a waiver or state plan amendment to allow for reimbursement for 988 services provided to an individual who is eligible and enrolled in Medicaid at the time this service is provided.

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> [26-18-425.] 26B-3-221. Medicaid waiver for respite care facility that provides services to homeless individuals.

- (1) As used in this section:
- (a) "Adult in the expansion population" means an adult:
- (i) described in 42 U.S.C. Sec. 1396a(a)(10)(A)(i)(VIII); and
- (ii) not otherwise eligible for Medicaid as a mandatory categorically needy individual.
- (b) "Homeless" means the same as that term is defined in Section [26-18-411] 2650
- 2651 26B-3-207
- (c) "Medical respite care" means short-term housing with supportive medical services. 2652
- (d) "Medical respite facility" means a residential facility that provides medical respite 2653 care to homeless individuals. 2654

(2) Before January 1, 2022, the department shall apply for a Medicaid waiver or state 2655 plan amendment with CMS to choose a single medical respite facility to reimburse for 2656 services provided to an individual who is: 2657 2658 (a) homeless; and 2659 (b) an adult in the expansion population. (3) The department shall choose a medical respite facility best able to serve 2660 2661 homeless individuals who are adults in the expansion population. (4) If the waiver or state plan amendment described in Subsection (2) is approved. 2662 while the waiver or state plan amendment is in effect, the department shall submit a report to 2663 2664 the Health and Human Services Interim Committee each year before November 30 detailing: (a) the number of homeless individuals served at the facility; 2665 2666 (b) the cost of the program; and 2667 (c) the reduction of health care costs due to the program's implementation. 2668 (5) Through administrative rule made in accordance with Title 63G, Chapter 3, Utah 2669 Administrative Rulemaking Act, the department shall further define and limit the services, 2670 described in this section, provided to a homeless individual. 2671 2672 [26-18-426.] 26B-3-222. Medicaid waiver expansion for extraordinary care 2673 reimbursement. 2674 (1) As used in this section: (a) "Existing home and community-based services waiver" means an existing home 2675 2676 and community-based services waiver in the state that serves an individual: 2677 (i) with an acquired brain injury; (ii) with an intellectual or physical disability; or 2678 2679 (iii) who is 65 years old or older. 2680 (b) "Personal care services" means a service that: 2681 (i) is furnished to an individual who is not an inpatient nor a resident of a hospital, nursing facility, intermediate care facility, or institution for mental diseases; 2682 2683 (ii) is authorized for an individual described in Subsection (1)(b)(i) in accordance with

(iii) is provided by an individual who is qualified to provide the services; and

(iv) is furnished in a home or another community-based setting.

a plan of treatment:

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- 2687 (c) "Waiver enrollee" means an individual who is enrolled in an existing home and community-based services waiver.
- 2689 (2) Before July 1, 2021, the department shall apply with CMS for an amendment to an existing home and community-based services waiver to implement a program to offer reimbursement to an individual who provides personal care services that constitute extraordinary care to a waiver enrollee who is the individual's spouse.
 - (3) If CMS approves the amendment described in Subsection (2), the department shall implement the program described in Subsection (2).
- 2695 (4) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define "extraordinary care" for purposes of Subsection (2).

2698 [26-18-428.] 26B-3-223. Delivery system adjustments for the targeted adult 2699 Medicaid program.

- (1) As used in this section, "targeted adult Medicaid program" means the same as that term is defined in Section [26-18-411] 26B-3-207.
- (2) The department may implement the delivery system adjustments authorized under Subsection (3) only on the later of:
 - (a) July 1, 2023; and

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- (b) the department determining that the Medicaid program, including providers and managed care organizations, are satisfying the metrics established in collaboration with the working group convened under Subsection [26-18-427] 26B-3-138 (2).
 - (3) The department may, for individuals who are enrolled in the targeted adult Medicaid program:
 - (a) integrate the delivery of behavioral and physical health in certain counties; and
- 2711 (b) deliver behavioral health services through an accountable care organization where 2712 implemented.
- 2713 (4) Before implementing the delivery system adjustments described in Subsection (3) 2714 in a county, the department shall, at a minimum, seek input from:
- 2715 (a) individuals who qualify for the targeted adult Medicaid program who reside in the 2716 county:
- 2717 (b) the county's executive officer, legislative body, and other county officials who are involved in the delivery of behavioral health services;

- 2719 (c) the local mental health authority and substance use authority that serves the 2720 county;
- 2721 (d) Medicaid managed care organizations operating in the state, including Medicaid accountable care organizations;
 - (e) providers of physical or behavioral health services in the county who provide services to enrollees in the targeted adult Medicaid program in the county; and
 - (f) other individuals that the department deems necessary.
 - (5) If the department provides Medicaid coverage through a managed care delivery system under this section, the department shall include language in the department's managed care contracts that require the managed care plan to:
 - (a) be in compliance with federal Medicaid managed care requirements;
 - (b) timely and accurately process authorizations and claims in accordance with Medicaid policy and contract requirements;
 - (c) adequately reimburse providers to maintain adequacy of access to care;
 - (d) provide care management services sufficient to meet the needs of Medicaid eligible individuals enrolled in the managed care plan's plan; and
- 2735 (e) timely resolve any disputes between a provider or enrollee with the managed care plan.
- 2737 (6) The department may take corrective action if the managed care organization fails to comply with the terms of the managed care organization's contract.

[26-18-429.] <u>26B-3-224.</u> Medicaid waiver for increased integrated health care reimbursement.

(1) As used in this section:

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- (a) "Integrated health care setting" means a health care or behavioral health care setting that provides integrated physical and behavioral health care services.
- 2745 (b) "Local mental health authority" means a local mental health authority described in 2746 Section 17-43-301.
 - (2) The department shall develop a proposal to allow the state Medicaid program to reimburse a local mental health authority for covered physical health care services provided in an integrated health care setting to Medicaid eligible individuals.
 - (3) Before December 31, 2022, the department shall apply for a Medicaid waiver or a

- state plan amendment with CMS to implement the proposal described in Subsection (2). 2751
- 2752 (4) If the waiver or state plan amendment described in Subsection (3) is approved, the department shall: 2753
 - (a) implement the proposal described in Subsection (2); and
- 2755 (b) while the waiver or state plan amendment is in effect, submit a report to the Health and Human Services Interim Committee each year before November 30 detailing: 2756
 - (i) the number of patients served under the waiver or state plan amendment;
 - (ii) the cost of the waiver or state plan amendment; and
- 2759 (iii) any benefits of the waiver or state plan amendment.

Part 3. Administration of Medicaid Programs: Drug Utilization Review and Long 2761 2762 **Term Care Facility Certification.**

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[26-18-101.] 26B-3-301. Definitions.

2765 As used in this part:

- (1) "Appropriate and medically necessary" means, regarding drug prescribing, 2766 2767 dispensing, and patient usage, that it is in conformity with the criteria and standards 2768 developed in accordance with this part.
- 2769 (2) "Board" means the Drug Utilization Review Board created in Section 26-18-102.
 - (3) "Certified program" means a nursing care facility program with Medicaid certification.
- 2772 (4) "Compendia" means resources widely accepted by the medical profession in 2773 the efficacious use of drugs, including "American Hospital Formulary Services Drug 2774 Information," "U.S. Pharmacopeia - Drug Information," "A.M.A. Drug Evaluations," 2775 peer-reviewed medical literature, and information provided by manufacturers of drug 2776 products.
- 2777 [(4)] (5) "Counseling" means the activities conducted by a pharmacist to inform 2778 Medicaid recipients about the proper use of drugs, as required by the board under this part.
- 2779 [(5)] (6) "Criteria" means those predetermined and explicitly accepted elements used 2780 to measure drug use on an ongoing basis in order to determine if the use is appropriate, 2781 medically necessary, and not likely to result in adverse medical outcomes.
- [(6)] (7) "Drug-disease contraindications" means that the therapeutic effect of a drug 2782

2783 is adversely altered by the presence of another disease condition. [(7)] (8) "Drug-interactions" means that two or more drugs taken by a recipient lead 2784 to clinically significant toxicity that is characteristic of one or any of the drugs present, or that 2785 2786 leads to interference with the effectiveness of one or any of the drugs. 2787 [(8)] (9) "Drug Utilization Review" or "DUR" means the program designed to measure and assess, on a retrospective and prospective basis, the proper use of outpatient 2788 2789 drugs in the Medicaid program. 2790 (10) "Intervention" means a form of communication utilized by the board with a 2791 prescriber or pharmacist to inform about or influence prescribing or dispensing practices. 2792 (11) "Medicaid certification" means the right of a nursing care facility, as a provider of a nursing care facility program, to receive Medicaid reimbursement for a specified number of 2793 2794 beds within the facility. 2795 (12) (a) "Nursing care facility" means the following facilities licensed by the 2796 department under Chapter 2, Part 2, Health Care Facility Licensing and Inspection: 2797 (i) skilled nursing facilities; 2798 (ii) intermediate care facilities; and 2799 (iii) an intermediate care facility for people with an intellectual disability. 2800 (b) "Nursing care facility" does not mean a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998). 2801 2802 (13) "Nursing care facility program" means the personnel, licenses, services, 2803 contracts and all other requirements that shall be met for a nursing care facility to be eligible 2804 for Medicaid certification under this part and division rule. 2805 (14) "Overutilization" or "underutilization" means the use of a drug in such quantities that the desired therapeutic goal is not achieved. 2806 2807 (11) (15) "Pharmacist" means a person licensed in this state to engage in the 2808 practice of pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act. 2809 (16) "Physical facility" means the buildings or other physical structures where a nursing care facility program is operated. 2810 2811 [(12)] (17) "Physician" means a person licensed in this state to practice medicine and surgery under Section 58-67-301 or osteopathic medicine under Section 58-68-301. 2812 [(13)] (18) "Prospective DUR" means that part of the drug utilization review program 2813

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that occurs before a drug is dispensed, and that is designed to screen for potential drug

2815	therapy problems based on explicit and predetermined criteria and standards.
2816	[(14)] (19) "Retrospective DUR" means that part of the drug utilization review
2817	program that assesses or measures drug use based on an historical review of drug use data
2818	against predetermined and explicit criteria and standards, on an ongoing basis with
2819	professional input.
2820	(20) "Rural county" means a county with a population of less than 50,000, as
2821	determined by:
2822	(a) the most recent official census or census estimate of the United States Bureau of
2823	the Census; or
2824	(b) the most recent population estimate for the county from the Utah Population
2825	Committee, if a population figure for the county is not available under Subsection (7)(a).
2826	(21) "Service area" means the boundaries of the distinct geographic area served by a
2827	certified program as determined by the division in accordance with this part and division rule.
2828	[(15)] (22) "Standards" means the acceptable range of deviation from the criteria
2829	that reflects local medical practice and that is tested on the Medicaid recipient database.
2830	[(16)] (23) "SURS" means the Surveillance Utilization Review System of the
2831	Medicaid program.
2832	[(17)] <u>(24)</u> "Therapeutic appropriateness" means drug prescribing and dispensing
2833	based on rational drug therapy that is consistent with criteria and standards.
2834	[(18)] (25) "Therapeutic duplication" means prescribing and dispensing the same
2835	drug or two or more drugs from the same therapeutic class where periods of drug
2836	administration overlap and where that practice is not medically indicated.
2837	(26) "Urban county" means a county that is not a rural county.
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2839	[26-18-102.] <u>26B-3-302.</u> DUR Board Creation and membership Expenses.
2840	(1) There is created a 12-member Drug Utilization Review Board responsible for
2841	implementation of a retrospective and prospective DUR program.
2842	(2) (a) Except as required by Subsection (2)(b), as terms of current board members
2843	expire, the executive director shall appoint each new member or reappointed member to a
2844	four-year term.

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shall, at the time of appointment or reappointment, adjust the length of terms to ensure that

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director

- the terms of board members are staggered so that approximately half of the board is appointed every two years.
- 2849 (c) Persons appointed to the board may be reappointed upon completion of their terms, but may not serve more than two consecutive terms.
- 2851 (d) The executive director shall provide for geographic balance in representation on the board.
- 2853 (3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
 - (4) The membership shall be comprised of the following:
- 2856 (a) four physicians who are actively engaged in the practice of medicine or
 2857 osteopathic medicine in this state, to be selected from a list of nominees provided by the
 2858 Utah Medical Association:
 - (b) one physician in this state who is actively engaged in academic medicine;
 - (c) three pharmacists who are actively practicing in retail pharmacy in this state, to be selected from a list of nominees provided by the Utah Pharmaceutical Association;
 - (d) one pharmacist who is actively engaged in academic pharmacy;
 - (e) one person who shall represent consumers;
 - (f) one person who shall represent pharmaceutical manufacturers, to be recommended by the Pharmaceutical Manufacturers Association; and
- 2866 (g) one dentist licensed to practice in this state under Title 58, Chapter 69, Dentist 2867 and Dental Hygienist Practice Act, who is actively engaged in the practice of dentistry, 2868 nominated by the Utah Dental Association.
 - (5) Physician and pharmacist members of the board shall have expertise in clinically appropriate prescribing and dispensing of outpatient drugs.
- 2871 (6) The board shall elect a chair from among its members who shall serve a one-year term, and may serve consecutive terms.
- 2873 (7) A member may not receive compensation or benefits for the member's service, 2874 but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;

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- 2876 (b) Section 63A-3-107; and
- 2877 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 2878 63A-3-107.

2879	[26-18-103.] <u>26B-3-303.</u> DUR Board Responsibilities.
2880	The board shall:
2881	(1) develop rules necessary to carry out its responsibilities as defined in this part;
2882	(2) oversee the implementation of a Medicaid retrospective and prospective DUR
2883	program in accordance with this part, including responsibility for approving provisions of
2884	contractual agreements between the Medicaid program and any other entity that will process
2885	and review Medicaid drug claims and profiles for the DUR program in accordance with this
2886	part;
2887	(3) develop and apply predetermined criteria and standards to be used in
2888	retrospective and prospective DUR, ensuring that the criteria and standards are based on the
2889	compendia, and that they are developed with professional input, in a consensus fashion, with
2890	provisions for timely revision and assessment as necessary. The DUR standards developed
2891	by the board shall reflect the local practices of physicians in order to monitor:
2892	(a) therapeutic appropriateness;
2893	(b) overutilization or underutilization;
2894	(c) therapeutic duplication;
2895	(d) drug-disease contraindications;
2896	(e) drug-drug interactions;
2897	(f) incorrect drug dosage or duration of drug treatment; and
2898	(g) clinical abuse and misuse;
2899	(4) develop, select, apply, and assess interventions and remedial strategies for
2900	physicians, pharmacists, and recipients that are educational and not punitive in nature, in
2901	order to improve the quality of care;
2902	(5) disseminate information to physicians and pharmacists to ensure that they are
2903	aware of the board's duties and powers;
2904	(6) provide written, oral, or electronic reminders of patient-specific or drug-specific
2905	information, designed to ensure recipient, physician, and pharmacist confidentiality, and
2906	suggest changes in prescribing or dispensing practices designed to improve the quality of
2907	care;
2908	(7) utilize face-to-face discussions between experts in drug therapy and the prescriber
2909	or pharmacist who has been targeted for educational intervention;
2910	(8) conduct intensified reviews or monitoring of selected prescribers or pharmacists;

- 2911 (9) create an educational program using data provided through DUR to provide active
 2912 and ongoing educational outreach programs to improve prescribing and dispensing practices,
 2913 either directly or by contract with other governmental or private entities;
 2914 (10) provide a timely evaluation of intervention to determine if those interventions
 2915 have improved the quality of care;
 2916 (11) publish the annual Drug Utilization Review report required under 42 C.F.R. Sec.
- 2916 (11) publish the annual Drug Utilization Review report required under 42 C.F.R. Sec. 2917 712;
- 2918 (12) develop a working agreement with related boards or agencies, including the 2919 State Board of Pharmacy, Physicians' Licensing Board, and SURS staff within the division, in 2920 order to clarify areas of responsibility for each, where those areas may overlap;
 - (13) establish a grievance process for physicians and pharmacists under this part, in accordance with Title 63G, Chapter 4, Administrative Procedures Act;
 - (14) publish and disseminate educational information to physicians and pharmacists concerning the board and the DUR program, including information regarding:
- 2925 (a) identification and reduction of the frequency of patterns of fraud, abuse, gross 2926 overuse, inappropriate, or medically unnecessary care among physicians, pharmacists, and 2927 recipients;
- 2928 (b) potential or actual severe or adverse reactions to drugs;
- 2929 (c) therapeutic appropriateness;
 - (d) overutilization or underutilization;
- (e) appropriate use of generics;
- 2932 (f) therapeutic duplication;

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- 2933 (g) drug-disease contraindications;
- 2934 (h) drug-drug interactions;
 - (i) incorrect drug dosage and duration of drug treatment;
- 2936 (j) drug allergy interactions; and
- 2937 (k) clinical abuse and misuse;
- 2938 (15) develop and publish, with the input of the State Board of Pharmacy, guidelines 2939 and standards to be used by pharmacists in counseling Medicaid recipients in accordance 2940 with this part. The guidelines shall ensure that the recipient may refuse counseling and that 2941 the refusal is to be documented by the pharmacist. Items to be discussed as part of that 2942 counseling include:

2943 (a) the name and description of the medication; 2944 (b) administration, form, and duration of therapy; (c) special directions and precautions for use; 2945 2946 (d) common severe side effects or interactions, and therapeutic interactions, and how 2947 to avoid those occurrences; (e) techniques for self-monitoring drug therapy: 2948 2949 (f) proper storage; 2950 (g) prescription refill information; and 2951 (h) action to be taken in the event of a missed dose; and 2952 (16) establish procedures in cooperation with the State Board of Pharmacy for pharmacists to record information to be collected under this part. The recorded information 2953 2954 shall include: 2955 (a) the name, address, age, and gender of the recipient; 2956 (b) individual history of the recipient where significant, including disease state, known 2957 allergies and drug reactions, and a comprehensive list of medications and relevant devices; 2958 (c) the pharmacist's comments on the individual's drug therapy; 2959 (d) name of prescriber; and 2960 (e) name of drug, dose, duration of therapy, and directions for use. 2961 2962 [26-18-104.] 26B-3-304. Confidentiality of records. 2963 (1) Information obtained under this part shall be treated as confidential or controlled 2964 information under Title 63G, Chapter 2, Government Records Access and Management Act. 2965 (2) The board shall establish procedures insuring that the information described in 2966 Subsection [26-18-103] 26B-3-303 (16) is held confidential by the pharmacist, being provided to the physician only upon request. 2967 2968 (3) The board shall adopt and implement procedures designed to ensure the 2969 confidentiality of all information collected, stored, retrieved, assessed, or analyzed by the 2970 board, staff to the board, or contractors to the DUR program, that identifies individual 2971 physicians, pharmacists, or recipients. The board may have access to identifying information 2972 for purposes of carrying out intervention activities, but that identifying information may not be 2973 released to anyone other than a member of the board. The board may release cumulative

nonidentifying information for research purposes.

2975 [26-18-105.] 26B-3-305. Drug prior approval program. 2976 (1) A drug prior approval program approved or implemented by the board shall meet 2977 the following conditions: 2978 (a) except as provided in Subsection (2), a drug may not be placed on prior approval 2979 for other than medical reasons; 2980 (b) the board shall hold a public hearing at least 30 days prior to placing a drug on 2981 prior approval; 2982 (c) notwithstanding the provisions of Section 52-4-202, the board shall provide not less than 14 days' notice to the public before holding a public hearing under Subsection 2983 2984 (1)(b);2985 (d) the board shall consider written and oral comments submitted by interested 2986 parties prior to or during the hearing held in accordance with Subsection (1)(b); 2987 (e) the board shall provide evidence that placing a drug class on prior approval: 2988 (i) will not impede quality of recipient care; and 2989 (ii) that the drug class is subject to clinical abuse or misuse; 2990 (f) the board shall reconsider its decision to place a drug on prior approval: 2991 (i) no later than nine months after any drug class is placed on prior approval; and 2992 (ii) at a public hearing with notice as provided in Subsection (1)(b); 2993 (g) the program shall provide an approval or denial of a request for prior approval: 2994 (i) by either: 2995 (A) fax; 2996 (B) telephone; or 2997 (C) electronic transmission; 2998 (ii) at least Monday through Friday, except for state holidays; and 2999 (iii) within 24 hours after receipt of the prior approval request: 3000 (h) the program shall provide for the dispensing of at least a 72-hour supply of the 3001 drug on the prior approval program: 3002 (i) in an emergency situation; or 3003 (ii) on weekends or state holidays; 3004 (i) the program may be applied to allow acceptable medical use of a drug on prior 3005 approval for appropriate off-label indications; and 3006 (i) before placing a drug class on the prior approval program, the board shall:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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3007	(i) determine that the requirements of Subsections (1)(a) through (i) have been met;
3008	and
3009	(ii) by majority vote, place the drug class on prior approval.
3010	(2) The board may, only after complying with Subsections (1)(b) through (j), consider
3011	the cost:
3012	(a) of a drug when placing a drug on the prior approval program; and
3013	(b) associated with including, or excluding a drug from the prior approval process,
3014	including:
3015	(i) potential side effects associated with a drug; or
3016	(ii) potential hospitalizations or other complications that may occur as a result of a
3017	drug's inclusion on the prior approval process.
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3019	[26-18-106.] <u>26B-3-306.</u> Advisory committees.
3020	The board may establish advisory committees to assist it in carrying out its duties
3021	under [this part] Sections 26B-3-302 through 309.
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3023	[26-18-107.] <u>26B-3-307.</u> Retrospective and prospective DUR.
3024	(1) The board, in cooperation with the division, shall include in its state plan the
3025	creation and implementation of a retrospective and prospective DUR program for Medicaid
3026	outpatient drugs to ensure that prescriptions are appropriate, medically necessary, and not
3027	likely to result in adverse medical outcomes.
3028	(2) The retrospective and prospective DUR program shall be operated under
3029	guidelines established by the board under Subsections (3) and (4).
3030	(3) The retrospective DUR program shall be based on guidelines established by the
3031	board, using the mechanized drug claims processing and information retrieval system to
3032	analyze claims data in order to:
3033	(a) identify patterns of fraud, abuse, gross overuse, and inappropriate or medically
3034	unnecessary care; and
3035	(b) assess data on drug use against explicit predetermined standards that are based
3036	on the compendia and other sources for the purpose of monitoring:

(i) therapeutic appropriateness;

(ii) overutilization or underutilization;

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3039	(iii) therapeutic duplication;
3040	(iv) drug-disease contraindications;
3041	(v) drug-drug interactions;
3042	(vi) incorrect drug dosage or duration of drug treatment; and
3043	(vii) clinical abuse and misuse.
3044	(4) The prospective DUR program shall be based on guidelines established by the
3045	board and shall provide that, before a prescription is filled or delivered, a review will be
3046	conducted by the pharmacist at the point of sale to screen for potential drug therapy
3047	problems resulting from:
3048	(a) therapeutic duplication;
3049	(b) drug-drug interactions;
3050	(c) incorrect dosage or duration of treatment;
3051	(d) drug-allergy interactions; and
3052	(e) clinical abuse or misuse.
3053	(5) In conducting the prospective DUR, a pharmacist may not alter the prescribed
3054	outpatient drug therapy without the consent of the prescribing physician or physician
3055	assistant. This section does not effect the ability of a pharmacist to substitute a generic
3056	equivalent.
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3058	[26-18-108.] <u>26B-3-308.</u> Penalties.
3059	Any person who violates the confidentiality provisions of [this part] Sections
3060	26B-3-302 through 26B-3-307 is guilty of a class B misdemeanor.
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3062	[26-18-109.] <u>26B-3-309.</u> Immunity.
3063	There is no liability on the part of, and no cause of action of any nature arises against
3064	any member of the board, its agents, or employees for any action or omission by them in
3065	effecting the provisions of [this part] Sections 26B-3-302 through 26B-3-307.
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3067	[26-18-502.] <u>26B-3-310.</u> Purpose Medicaid certification of nursing care
3068	facilities.
3069	(1) The Legislature finds:

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(a) that an oversupply of nursing care facilities in the state adversely affects the state

3071	Medicaid program and the health of the people in the state;
3072	(b) it is in the best interest of the state to prohibit nursing care facilities from receiving
3073	Medicaid certification, except as provided by [this part] Sections 26B-3-311 through

3074 26B-3-313; and

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- 3075 (c) it is in the best interest of the state to encourage aging nursing care facilities with 3076 Medicaid certification to renovate the nursing care facilities' physical facilities so that the 3077 quality of life and clinical services for Medicaid residents are preserved.
 - (2) Medicaid reimbursement of nursing care facility programs is limited to:
- 3079 (a) the number of nursing care facility programs with Medicaid certification as of May 3080 9, 2016; and
- (b) additional nursing care facility programs approved for Medicaid certification under 3081 3082 the provisions of Subsections 26-18-503(5) and (7).
 - (3) The division may not:
 - (a) except as authorized by Section 26-18-503:

Medicaid program and the health of the people in the state:

- (i) process initial applications for Medicaid certification or execute provider agreements with nursing care facility programs; or
- (ii) reinstate Medicaid certification for a nursing care facility whose certification expired or was terminated by action of the federal or state government; or
- (b) execute a Medicaid provider agreement with a certified program that moves to a different physical facility, except as authorized by Subsection 26-18-503(3).
- (4) Notwithstanding Section 26-18-503, beginning May 4, 2021, the division may not approve a new or additional bed in an intermediate care facility for individuals with an intellectual disability for Medicaid certification, unless certification of the bed by the division does not increase the total number in the state of Medicaid-certified beds in intermediate care facilities for individuals with an intellectual disability.

[26-18-503.] <u>26B-3-311.</u> Authorization to renew, transfer, or increase Medicaid certified programs -- Reimbursement methodology.

(1) (a) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional

3103 beds in accordance with Subsection (5).

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- (b) The division may renew Medicaid certification of a nursing care facility program 3104 that is not currently certified if: 3105
 - (i) since the day on which the program last operated with Medicaid certification:
 - (A) the physical facility where the program operated has functioned solely and continuously as a nursing care facility; and
- 3109 (B) the owner of the program has not, under this section or Section 26-18-505, 3110 transferred to another nursing care facility program the license for any of the Medicaid beds 3111 in the program; and
 - (ii) except as provided in Subsection 26-18-502(4), the number of beds granted renewed Medicaid certification does not exceed the number of beds certified at the time the program last operated with Medicaid certification, excluding a period of time where the program operated with temporary certification under Subsection 26-18-504(3).
 - (2) (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:
 - (i) the new nursing care facility program operates at the same physical facility as the previous Medicaid certified program:
 - (ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4):
 - (iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient; and
 - (iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).
 - (b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:
 - (i) is not owned in whole or in part by the previous nursing care facility program; or
 - (ii) is not a successor in interest of the previous nursing care facility program.
 - (3) The division may issue a Medicaid certification to a nursing care facility program

3135 that was previously a certified program but now resides in a new or renovated physical facility 3136 if the nursing care facility program meets all of the following:

- 3137 (a) the nursing care facility program met all applicable requirements for Medicaid 3138 certification at the time of closure:
 - (b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;
 - (c) the time between which the certified program ceased to operate in the original facility and will begin to operate in the new physical facility is not more than three years. unless:
 - (i) an emergency is declared by the president of the United States or the governor, affecting the building or renovation of the physical facility;
 - (ii) the director approves an exception to the three-year requirement for any nursing care facility program within the three-year requirement;
 - (iii) the provider submits documentation supporting a request for an extension to the director that demonstrates a need for an extension; and
 - (iv) the exception does not extend for more than two years beyond the three-year requirement;
 - (d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;
 - (e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and
 - (f) the bed capacity in the physical facility has not been expanded unless the director has approved additional beds in accordance with Subsection (5).
 - (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) shall give written assurances satisfactory to the director or the director's designee that:
 - (i) no third party has a legitimate claim to operate the certified program;
 - (ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and
 - (iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at

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the physical facility the certified program shall voluntarily comply with Subsection (4)(b). 3167

- (b) If a finding is made under the provisions of Subsection (4)(a)(iii):
- (i) the certified program shall immediately surrender its Medicaid certification and 3169 3170 comply with division rules regarding billing for Medicaid and the provision of services to 3171 Medicaid patients; and
 - (ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).
 - (5) (a) The director may approve additional nursing care facility programs for Medicaid certification, or additional beds for Medicaid certification within an existing nursing care facility program, if a nursing care facility or other interested party requests Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program, and the nursing care facility program or other interested party complies with this section.
 - (b) The nursing care facility or other interested party requesting Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program under Subsection (5)(a) shall submit to the director:
 - (i) proof of the following as reasonable evidence that bed capacity provided by Medicaid certified programs within the county or group of counties impacted by the requested additional Medicaid certification is insufficient:
 - (A) nursing care facility occupancy levels for all existing and proposed facilities will be at least 90% for the next three years;
 - (B) current nursing care facility occupancy is 90% or more; or
 - (C) there is no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification; and
 - (ii) an independent analysis demonstrating that at projected occupancy rates the nursing care facility's after-tax net income is sufficient for the facility to be financially viable.
 - (c) Any request for additional beds as part of a renovation project are limited to the maximum number of beds allowed in Subsection (7).
 - (d) The director shall determine whether to issue additional Medicaid certification by considering:
- (i) whether bed capacity provided by certified programs within the county or group of 3197 3198 counties impacted by the requested additional Medicaid certification is insufficient, based on

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3199 the information submitted to the director under Subsection (5)(b);

- 3200 (ii) whether the county or group of counties impacted by the requested additional
 3201 Medicaid certification is underserved by specialized or unique services that would be
 3202 provided by the nursing care facility;
 - (iii) whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3);
 - (iv) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of Medicaid recipients; and
 - (v) (A) whether the existing certified programs within the county or group of counties have provided services of sufficient quality to merit at least a two-star rating in the Medicare Five-Star Quality Rating System over the previous three-year period; and
 - (B) information obtained under Subsection (9).
- 3211 (6) The department shall adopt administrative rules in accordance with Title 63G, 3212 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility 3213 property reimbursement methodology to:
 - (a) only pay that portion of the property component of rates, representing actual bed usage by Medicaid clients as a percentage of the greater of:
 - (i) actual occupancy; or

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- 3217 (ii) (A) for a nursing care facility other than a facility described in Subsection 3218 (6)(a)(ii)(B), 85% of total bed capacity; or
 - (B) for a rural nursing care facility, 65% of total bed capacity; and
- 3220 (b) not allow for increases in reimbursement for property values without major 3221 renovation or replacement projects as defined by the department by rule.
 - (7) (a) Except as provided in Subsection 26-18-502(3), if a nursing care facility does not seek Medicaid certification for a bed under Subsections (1) through (6), the department shall, notwithstanding Subsections 26-18-504(3)(a) and (b), grant Medicaid certification for additional beds in an existing Medicaid certified nursing care facility that has 90 or fewer licensed beds, including Medicaid certified beds, in the facility if:
 - (i) the nursing care facility program was previously a certified program for all beds but now resides in a new facility or in a facility that underwent major renovations involving major structural changes, with 50% or greater facility square footage design changes, requiring review and approval by the department;

- 3231 (ii) the nursing care facility meets the quality of care regulations issued by CMS; and
- 3232 (iii) the total number of additional beds in the facility granted Medicaid certification 3233 under this section does not exceed 10% of the number of licensed beds in the facility.
 - (b) The department may not revoke the Medicaid certification of a bed under this Subsection (7) as long as the provisions of Subsection (7)(a)(ii) are met.
 - (8) (a) If a nursing care facility or other interested party indicates in its request for additional Medicaid certification under Subsection (5)(a) that the facility will offer specialized or unique services, but the facility does not offer those services after receiving additional Medicaid certification, the director shall revoke the additional Medicaid certification.
 - (b) The nursing care facility program shall obtain Medicaid certification for any additional Medicaid beds approved under Subsection (5) or (7) within three years of the date of the director's approval, or the approval is void.
 - (9) (a) If the director makes an initial determination that quality standards under Subsection (5)(d)(v) have not been met in a rural county or group of rural counties over the previous three-year period, the director shall, before approving certification of additional Medicaid beds in the rural county or group of counties:
 - (i) notify the certified program that has not met the quality standards in Subsection (5)(d)(v) that the director intends to certify additional Medicaid beds under the provisions of Subsection (5)(d)(v); and
 - (ii) consider additional information submitted to the director by the certified program in a rural county that has not met the quality standards under Subsection (5)(d)(v).
 - (b) The notice under Subsection (9)(a) does not give the certified program that has not met the quality standards under Subsection (5)(d)(v), the right to legally challenge or appeal the director's decision to certify additional Medicaid beds under Subsection (5)(d)(v).

3256 [26-18-504.] <u>26B-3-312.</u> Appeals of division decision -- Rulemaking authority -- 3257 Application of act.

- (1) A decision by the director under this part to deny Medicaid certification for a nursing care facility program or to deny additional bed capacity for an existing certified program is subject to review under the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
 - (2) The department shall make rules to administer and enforce [this part] Sections

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- 3263 <u>26B-3-310 through 26B-3-313</u> in accordance with Title 63G, Chapter 3, Utah Administrative
 3264 Rulemaking Act.
- 3265 (3) (a) In the event the department is at risk for a federal disallowance with regard to a
 3266 Medicaid recipient being served in a nursing care facility program that is not Medicaid
 3267 certified, the department may grant temporary Medicaid certification to that facility for up to
 3268 24 months.
- 3269 (b) (i) The department may extend a temporary Medicaid certification granted to a 3270 facility under Subsection (3)(a):
 - (A) for the number of beds in the nursing care facility occupied by a Medicaid recipient; and
 - (B) for the period of time during which the Medicaid recipient resides at the facility.
- 3274 (ii) A temporary Medicaid certification granted under this Subsection (3) is revoked 3275 upon:
 - (A) the discharge of the patient from the facility; or
 - (B) the patient no longer residing at the facility for any reason.
- 3278 (c) The department may place conditions on the temporary certification granted under 3279 Subsections (3)(a) and (b), such as:
 - (i) not allowing additional admissions of Medicaid recipients to the program; and
- 3281 (ii) not paying for the care of the patient after October 1, 2008, with state only dollars.
 - [26-18-505.] <u>26B-3-313.</u> Authorization to sell or transfer licensed Medicaid beds -- Duties of transferor -- Duties of transferee -- Duties of division.
 - (1) This section provides a method to transfer or sell the license for a Medicaid bed from a nursing care facility program to another entity that is in addition to the authorization to transfer under Section [26-18-503] 26B-3-311.
 - (2) (a) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds in accordance with Subsection (2)(b) if:
 - (i) at the time of the transfer, and with respect to the license for the Medicaid bed that will be transferred, the nursing care facility program that will transfer the Medicaid license meets all applicable regulations for Medicaid certification;
- 3293 (ii) the nursing care facility program gives a written assurance, which is postmarked or 3294 has proof of delivery 30 days before the transfer, to the director and to the transferee in

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- (iii) the nursing care facility program that will transfer the license for a Medicaid bed notifies the division in writing, which is postmarked or has proof of delivery 30 days before the transfer, of:
 - (A) the number of bed licenses that will be transferred;
- 3300 (B) the date of the transfer; and

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- (C) the identity and location of the entity receiving the transferred licenses; and
- 3302 (iv) if the nursing care facility program for which the license will be transferred or 3303 purchased is located in an urban county with a nursing care facility average annual 3304 occupancy rate over the previous two years less than or equal to 75%, the nursing care 3305 facility program transferring or selling the license demonstrates to the satisfaction of the 3306 director that the sale or transfer:
 - (A) will not result in an excessive number of Medicaid certified beds within the county or group of counties that would be impacted by the transfer or sale; and
 - (B) best meets the needs of Medicaid recipients.
 - (b) Except as provided in Subsection (2)(c), a nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds to:
- 3312 (i) a nursing care facility program that has the same owner or successor in interest of the same owner;
 - (ii) a nursing care facility program that has a different owner; or
 - (iii) a related-party nonnursing-care-facility entity that wants to hold one or more of the licenses for a nursing care facility program not yet identified, as long as:
 - (A) the licenses are subsequently transferred or sold to a nursing care facility program within three years; and
 - (B) the nursing care facility program notifies the director of the transfer or sale in accordance with Subsection (2)(a)(iii).
 - (c) A nursing care facility program may not transfer or sell one or more of its licenses for Medicaid beds to an entity under Subsection (2)(b)(i), (ii), or (iii) that is located in a rural county unless the entity requests, and the director issues, Medicaid certification for the beds under Subsection 26-18-503(5).
- 3325 (3) A nursing care facility program or entity under Subsection (2)(b)(i), (ii), or (iii) that receives or purchases a license for a Medicaid bed under Subsection (2)(b):

- (a) may receive a license for a Medicaid bed from more than one nursing care facility
 program;
 (b) shall give the division notice, which is postmarked or has proof of delivery within
 - (b) shall give the division notice, which is postmarked or has proof of delivery within 14 days of the nursing care facility program or entity seeking Medicaid certification of beds in the nursing care facility program or entity, of the total number of licenses for Medicaid beds that the entity received and who it received the licenses from;
- 3333 (c) may only seek Medicaid certification for the number of licensed beds in the 3334 nursing care facility program equal to the total number of licenses for Medicaid beds received 3335 by the entity;
- (d) does not have to demonstrate need or seek approval for the Medicaid licensed bed under Subsection [26-18-503] 26B-3-311 (5), except as provided in Subsections (2)(a)(iv) and (2)(c);
- (e) shall meet the standards for Medicaid certification other than those in Subsection [26-18-503] 26B-3-311 (5), including personnel, services, contracts, and licensing of facilities under [Chapter 21, Health Care Facility Licensing and Inspection Act] Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and
 - (f) shall obtain Medicaid certification for the licensed Medicaid beds within three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).
 - (4) (a) When the division receives notice of a transfer of a license for a Medicaid bed under Subsection (2)(a)(iii)(A), the department shall reduce the number of licenses for Medicaid beds at the transferring nursing care facility:
 - (i) equal to the number of licenses transferred; and
 - (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).
 - (b) For purposes of Section [26-18-502] <u>26B-3-310</u>, the division shall approve Medicaid certification for the receiving nursing care facility program or entity:
 - (i) in accordance with the formula established in Subsection (3)(c); and
- 3353 (ii) if:

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- 3354 (A) the nursing care facility seeks Medicaid certification for the transferred licenses 3355 within the time limit required by Subsection (3)(f); and
- 3356 (B) the nursing care facility program meets other requirements for Medicaid certification under Subsection (3)(e).
 - (c) A license for a Medicaid bed may not be approved for Medicaid certification

without meeting the requirements of Sections [26-18-502 and 26-18-503] 26B-3-310 and 3359 3360 26B-3-311 if: (i) the license for a Medicaid bed is transferred under this section but the receiving 3361 entity does not obtain Medicaid certification for the licensed bed within the time required by 3362 3363 Subsection (3)(f); or (ii) the license for a Medicaid bed is transferred under this section but the license is 3364 3365 no longer eligible for Medicaid certification. 3366 Part 4. Nursing Care Facility Assessment. 3367 3368 [26-35a-103.] 26B-3-401. Definitions. 3369 As used in this [chapter] part: 3370 3371 (1) (a) "Nursing care facility" means: 3372 (i) a nursing care facility [described in Subsection 26-21-2(17)] as defined in Section 3373 26B-2-201; 3374 (ii) beginning January 1, 2006, a designated swing bed in: (A) a general acute hospital as defined in [Subsection 26-21-2(11)] Section 3375 3376 26B-2-201; and 3377 (B) a critical access hospital which meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) 3378 (1998); and 3379 (iii) an intermediate care facility for people with an intellectual disability that is licensed 3380 under Section [26-21-13.5] 26B-2-2XX. 3381 (b) "Nursing care facility" does not include: (i) the Utah State Developmental Center; 3382 3383 (ii) the Utah State Hospital; 3384 (iii) a general acute hospital, specialty hospital, or small health care facility as those 3385 terms are defined in Section [26-21-2] 26B-2-201; or 3386 (iv) a Utah State Veterans Home. 3387 (2) "Patient day" means each calendar day in which an individual patient is admitted 3388 to the nursing care facility during a calendar month, even if on a temporary leave of absence 3389 from the facility.

3391	[26-35a-102.] <u>26B-3-402.</u>	Legislative findings.
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- 3392 (1) The Legislature finds that there is an important state purpose to improve the quality of care given to persons who are elderly and to people who have a disability, in long-term care nursing facilities.
 - (2) The Legislature finds that in order to improve the quality of care to those persons described in Subsection (1), the rates paid to the nursing care facilities by the Medicaid program must be adequate to encourage and support quality care.
 - (3) The Legislature finds that in order to meet the objectives in Subsections (1) and (2), adequate funding must be provided to increase the rates paid to nursing care facilities providing services pursuant to the Medicaid program.

[26-35a-104.] <u>26B-3-403.</u> Collection, remittance, and payment of nursing care facilities assessment.

- (1) (a) Beginning July 1, 2004, an assessment is imposed upon each nursing care facility in the amount designated in Subsection (1)(c).
- (b) (i) The department shall establish by rule, a uniform rate per non-Medicare patient day that may not exceed 6% of the total gross revenue for services provided to patients of all nursing care facilities licensed in this state.
- (ii) For purposes of Subsection (1)(b)(i), total revenue does not include charitable contribution received by a nursing care facility.
- (c) The department shall calculate the assessment imposed under Subsection (1)(a) by multiplying the total number of patient days of care provided to non-Medicare patients by the nursing care facility, as provided to the department pursuant to Subsection (3)(a), by the uniform rate established by the department pursuant to Subsection (1)(b).
- (2) (a) The assessment imposed by this [chapter] part is due and payable on a monthly basis on or before the last day of the month next succeeding each monthly period.
- (b) The collecting agent for this assessment shall be the department which is vested with the administration and enforcement of this [chapter] part, including the right to audit records of a nursing care facility related to patient days of care for the facility.
- 3420 (c) The department shall forward proceeds from the assessment imposed by this
 3421 [chapter] part to the state treasurer for deposit in the expendable special revenue fund as
 3422 specified in Section 26-35a-106.

- 3423 (3) Each nursing care facility shall, on or before the end of the month next succeeding 3424 each calendar monthly period, file with the department:
 - (a) a report which includes:

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- 3426 (i) the total number of patient days of care the facility provided to non-Medicare patients during the preceding month;
 - (ii) the total gross revenue the facility earned as compensation for services provided to patients during the preceding month; and
 - (iii) any other information required by the department; and
- 3431 (b) a return for the monthly period, and shall remit with the return the assessment required by this [chapter] part to be paid for the period covered by the return.
 - (4) Each return shall contain information and be in the form the department prescribes by rule.
 - (5) The assessment as computed in the return is an allowable cost for Medicaid reimbursement purposes.
 - (6) The department may by rule, extend the time for making returns and paying the assessment.
 - (7) Each nursing care facility that fails to pay any assessment required to be paid to the state, within the time required by this [chapter] part, or that fails to file a return as required by this [chapter] part, shall pay, in addition to the assessment, penalties and interest as provided in Section 26-35a-105.

[26-35a-105.] 26B-3-404. Penalties and interest.

- (1) The penalty for failure to file a return or pay the assessment due within the time prescribed by this [chapter] part is the greater of \$50, or 1% of the assessment due on the return.
- (2) For failure to pay within 30 days of a notice of deficiency of assessment required to be paid, the penalty is the greater of \$50 or 5% of the assessment due.
 - (3) The penalty for underpayment of the assessment is as follows:
- 3451 (a) If any underpayment of assessment is due to negligence, the penalty is 25% of the underpayment.
- 3453 (b) If the underpayment of the assessment is due to intentional disregard of law or rule, the penalty is 50% of the underpayment.

3455	(4) For intent to evade the assessment, the penalty is 100% of the underpayment.
3456	(5) The rate of interest applicable to an underpayment of an assessment under this
3457	[chapter] part or an unpaid penalty under this [chapter] part is 12% annually.
3458	(6) The department may waive the imposition of a penalty for good cause.
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3460	[26-35a-107.] <u>26B-3-405.</u> Adjustment to nursing care facility Medicaid
3461	reimbursement rates.
3462	If federal law or regulation prohibits the money in the Nursing Care Facilities Provider
3463	Assessment Fund from being used in the manner set forth in Subsection 26-35a-106(1)(b),
3464	the rates paid to nursing care facilities for providing services pursuant to the Medicaid
3465	program shall be changed:
3466	(1) except as otherwise provided in Subsection (2), to the rates paid to nursing care
3467	facilities on June 30, 2004; or
3468	(2) if the Legislature or the department has on or after July 1, 2004, changed the
3469	rates paid to facilities through a manner other than the use of expenditures from the Nursing
3470	Care Facilities Provider Assessment Fund, to the rates provided for by the Legislature or the
3471	department.
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3473	[26-35a-108.] <u>26B-3-406.</u> Intermediate care facility for people with an
3474	intellectual disability Uniform rate.
3475	An intermediate care facility for people with an intellectual disability is subject to all the
3476	provisions of this [chapter] part, except that the department shall establish a uniform rate for
3477	an intermediate care facility for people with an intellectual disability that:
3478	(1) is based on the same formula specified for nursing care facilities under the
3479	provisions of Subsection 26-35a-104(1)(b); and
3480	(2) may be different than the uniform rate established for other nursing care facilities.
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3482	Part 5. Inpatient Hospital Assessment.
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3484	[26-36b-103.] <u>26B-3-501.</u> Definitions.
3485	As used in this [chapter] <u>part</u> :
3486	(1) "Assessment" means the inpatient hospital assessment established by this

3487	[chapter] <u>part</u> .
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- 3488 (2) "CMS" means the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services.
 - (3) "Discharges" means the number of total hospital discharges reported on:
- 3491 (a) Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare cost report for the applicable assessment year; or
- 3493 (b) a similar report adopted by the department by administrative rule, if the report 3494 under Subsection (3)(a) is no longer available.
 - (4) "Division" means the Division of Health Care Financing within the department.
- 3496 (5) "Enhancement waiver program" means the program established by the Primary Care Network enhancement waiver program described in Section 26-18-416.
- 3498 (6) "Health coverage improvement program" means the health coverage improvement program described in Section 26-18-411.
 - (7) "Hospital share" means the hospital share described in Section 26-36b-203.
- 3501 (8) "Medicaid accountable care organization" means a managed care organization, as 3502 defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of 3503 Section 26-18-405.
- 3504 (9) "Medicaid waiver expansion" means a Medicaid expansion in accordance with 3505 Section 26-18-3.9 or 26-18-415.
- 3506 (10) "Medicare cost report" means CMS-2552-10, the cost report for electronic filing of hospitals.
- 3508 (11) (a) "Non-state government hospital" means a hospital owned by a non-state government entity.
 - (b) "Non-state government hospital" does not include:
- 3511 (i) the Utah State Hospital; or

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- 3512 (ii) a hospital owned by the federal government, including the Veterans Administration Hospital.
- 3514 (12) (a) "Private hospital" means:
- 3515 (i) a general acute hospital, as defined in Section 26-21-2, that is privately owned and operating in the state; and
- 3517 (ii) a privately owned specialty hospital operating in the state, including a privately owned hospital whose inpatient admissions are predominantly for:

3519	(A) rehabilitation;
3520	(B) psychiatric care;
3521	(C) chemical dependency services; or
3522	(D) long-term acute care services.
3523	(b) "Private hospital" does not include a facility for residential treatment as defined in
3524	Section 62A-2-101.
3525	(13) "State teaching hospital" means a state owned teaching hospital that is part of an
3526	institution of higher education.
3527	(14) "Upper payment limit gap" means the difference between the private hospital
3528	outpatient upper payment limit and the private hospital Medicaid outpatient payments, as
3529	determined in accordance with 42 C.F.R. Sec. 447.321.
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3531	[26-36b-102.] <u>26B-3-502.</u> Application.
3532	(1) Other than for the imposition of the assessment described in this [chapter] part,
3533	nothing in this [chapter] part shall affect the nonprofit or tax exempt status of any nonprofit
3534	charitable, religious, or educational health care provider under any:
3535	(a) state law;
3536	(b) ad valorem property taxes;
3537	(c) sales or use taxes; or
3538	(d) other taxes, fees, or assessments, whether imposed or sought to be imposed, by
3539	the state or any political subdivision of the state.
3540	(2) All assessments paid under this [chapter] part may be included as an allowable
3541	cost of a hospital for purposes of any applicable Medicaid reimbursement formula.
3542	(3) This [chapter] part does not authorize a political subdivision of the state to:
3543	(a) license a hospital for revenue;
3544	(b) impose a tax or assessment upon a hospital; or
3545	(c) impose a tax or assessment measured by the income or earnings of a hospital.
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3547	[26-36b-201.] <u>26B-3-503.</u> Assessment.
3548	(1) An assessment is imposed on each private hospital:
3549	(a) beginning upon the later of CMS approval of:
3550	(i) the health coverage improvement program waiver under Section 26-18-411; and

3551	(ii) the assessment under this [chapter] part;
3552	(b) in the amount designated in Sections 26-36b-204 and 26-36b-205; and
3553	(c) in accordance with Section 26-36b-202.
3554	(2) Subject to Section 26-36b-203, the assessment imposed by this [chapter] part is
3555	due and payable on a quarterly basis, after payment of the outpatient upper payment limit
3556	supplemental payments under Section 26-36b-210 have been paid.
3557	(3) The first quarterly payment is not due until at least three months after the earlier of
3558	the effective dates of the coverage provided through:
3559	(a) the health coverage improvement program;
3560	(b) the enhancement waiver program; or
3561	(c) the Medicaid waiver expansion.
3562	
3563	[26-36b-202.] <u>26B-3-504.</u> Collection of assessment Deposit of revenue
3564	Rulemaking.
3565	(1) The collecting agent for the assessment imposed under Section 26-36b-201 is the
3566	department.
3567	(2) The department is vested with the administration and enforcement of this [chapter]
3568	part, and may make rules in accordance with Title 63G, Chapter 3, Utah Administrative
3569	Rulemaking Act, necessary to:
3570	(a) collect the assessment, intergovernmental transfers, and penalties imposed under
3571	this [chapter] <u>part</u> ;
3572	(b) audit records of a facility that:
3573	(i) is subject to the assessment imposed by this [chapter] part; and
3574	(ii) does not file a Medicare cost report; and
3575	(c) select a report similar to the Medicare cost report if Medicare no longer uses a
3576	Medicare cost report.
3577	(3) The department shall:
3578	(a) administer the assessment in this [chapter] part separately from the assessment
3579	in Chapter 36d, Hospital Provider Assessment Act; and
3580	(b) deposit assessments collected under this [chapter] part into the Medicaid
3581	Expansion Fund created by Section 26-36b-208.

3583	[26-36b-203.] <u>26B-3-505.</u> Quarterly notice.
3584	(1) Quarterly assessments imposed by this [chapter] part shall be paid to the division
3585	within 15 business days after the original invoice date that appears on the invoice issued by
3586	the division.
3587	(2) The department may, by rule, extend the time for paying the assessment.
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3589	[26-36b-204.] <u>26B-3-506.</u> Hospital financing of health coverage improvement
3590	program Medicaid waiver expansion Hospital share.
3591	(1) The hospital share is:
3592	(a) 45% of the state's net cost of the health coverage improvement program, including
3593	Medicaid coverage for individuals with dependent children up to the federal poverty level
3594	designated under Section 26-18-411;
3595	(b) 45% of the state's net cost of the enhancement waiver program;
3596	(c) if the waiver for the Medicaid waiver expansion is approved, \$11,900,000; and
3597	(d) 45% of the state's net cost of the upper payment limit gap.
3598	(2) (a) The hospital share is capped at no more than \$13,600,000 annually, consisting
3599	of:
3600	(i) an \$11,900,000 cap for the programs specified in Subsections (1)(a) through (c);
3601	and
3602	(ii) a \$1,700,000 cap for the program specified in Subsection (1)(d).
3603	(b) The department shall prorate the cap described in Subsection (2)(a) in any year in
3604	which the programs specified in Subsections (1)(a) and (d) are not in effect for the full fiscal
3605	year.
3606	(3) Private hospitals shall be assessed under this [chapter] part for:
3607	(a) 69% of the portion of the hospital share for the programs specified in Subsections
3608	(1)(a) through (c); and
3609	(b) 100% of the portion of the hospital share specified in Subsection (1)(d).
3610	(4) (a) In the report described in Subsection 26-18-3.9(8), the department shall
3611	calculate the state's net cost of each of the programs described in Subsections (1)(a) through
3612	(c) that are in effect for that year.

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(b) If the assessment collected in the previous fiscal year is above or below the

hospital share for private hospitals for the previous fiscal year, the underpayment or

overpayment of the assessment by the private hospitals shall be applied to the fiscal year in which the report is issued.

- (5) A Medicaid accountable care organization shall, on or before October 15 of each year, report to the department the following data from the prior state fiscal year for each private hospital, state teaching hospital, and non-state government hospital provider that the Medicaid accountable care organization contracts with:
 - (a) for the traditional Medicaid population:
- 3622 (i) hospital inpatient payments;

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- (ii) hospital inpatient discharges;
- (iii) hospital inpatient days; and
- 3625 (iv) hospital outpatient payments; and
- 3626 (b) if the Medicaid accountable care organization enrolls any individuals in the health 3627 coverage improvement program, the enhancement waiver program, or the Medicaid waiver 3628 expansion, for the population newly eligible for any of those programs:
- 3629 (i) hospital inpatient payments;
 - (ii) hospital inpatient discharges;
 - (iii) hospital inpatient days; and
 - (iv) hospital outpatient payments.
 - (6) The department shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide details surrounding specific content and format for the reporting by the Medicaid accountable care organization.

[26-36b-205.] <u>26B-3-507.</u> Calculation of assessment.

- (1) (a) Except as provided in Subsection (1)(b), an annual assessment is payable on a quarterly basis for each private hospital in an amount calculated by the division at a uniform assessment rate for each hospital discharge, in accordance with this section.
- (b) A private teaching hospital with more than 425 beds and 60 residents shall pay an assessment rate 2.5 times the uniform rate established under Subsection (1)(c).
- (c) The division shall calculate the uniform assessment rate described in Subsection (1)(a) by dividing the hospital share for assessed private hospitals, described in Subsections 26-36b-204(1) and 26-36b-204(3), by the sum of:
 - (i) the total number of discharges for assessed private hospitals that are not a private

3647	teaching hospital; and
3648	(ii) 2.5 times the number of discharges for a private teaching hospital, described in
3649	Subsection (1)(b).
3650	(d) The division may, by rule made in accordance with Title 63G, Chapter 3, Utah
3651	Administrative Rulemaking Act, adjust the formula described in Subsection (1)(c) to address
3652	unforeseen circumstances in the administration of the assessment under this [chapter] part.
3653	(e) Any quarterly changes to the uniform assessment rate shall be applied uniformly
3654	to all assessed private hospitals.
3655	(2) Except as provided in Subsection (3), for each state fiscal year, the division shall
3656	determine a hospital's discharges as follows:
3657	(a) for state fiscal year 2017, the hospital's cost report data for the hospital's fiscal
3658	year ending between July 1, 2013, and June 30, 2014; and
3659	(b) for each subsequent state fiscal year, the hospital's cost report data for the
3660	hospital's fiscal year that ended in the state fiscal year two years before the assessment
3661	fiscal year.
3662	(3) (a) If a hospital's fiscal year Medicare cost report is not contained in the CMS
3663	Healthcare Cost Report Information System file:
3664	(i) the hospital shall submit to the division a copy of the hospital's Medicare cost
3665	report applicable to the assessment year; and
3666	(ii) the division shall determine the hospital's discharges.
3667	(b) If a hospital is not certified by the Medicare program and is not required to file a
3668	Medicare cost report:
3669	(i) the hospital shall submit to the division the hospital's applicable fiscal year
3670	discharges with supporting documentation;
3671	(ii) the division shall determine the hospital's discharges from the information
3672	submitted under Subsection (3)(b)(i); and
3673	(iii) failure to submit discharge information shall result in an audit of the hospital's
3674	records and a penalty equal to 5% of the calculated assessment.
3675	(4) Except as provided in Subsection (5), if a hospital is owned by an organization
3676	that owns more than one hospital in the state:

department; and

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(a) the assessment for each hospital shall be separately calculated by the

3679	(b) each separate hospital shall pay the assessment imposed by this [chapter] part.
3680	(5) If multiple hospitals use the same Medicaid provider number:
3681	(a) the department shall calculate the assessment in the aggregate for the hospitals
3682	using the same Medicaid provider number; and
3683	(b) the hospitals may pay the assessment in the aggregate.
3684	
3685	[26-36b-206.] <u>26B-3-508.</u> State teaching hospital and non-state government
3686	hospital mandatory intergovernmental transfer.
3687	(1) The state teaching hospital and a non-state government hospital shall make an
3688	intergovernmental transfer to the Medicaid Expansion Fund created in Section 26-36b-208,
3689	in accordance with this section.
3690	(2) The hospitals described in Subsection (1) shall pay the intergovernmental transfer
3691	beginning on the later of CMS approval of:
3692	(a) the health improvement program waiver under Section 26-18-411; or
3693	(b) the assessment for private hospitals in this [chapter] part.
3694	(3) The intergovernmental transfer is apportioned as follows:
3695	(a) the state teaching hospital is responsible for:
3696	(i) 30% of the portion of the hospital share specified in Subsections 26-36b-204(1)(a)
3697	through (c); and
3698	(ii) 0% of the hospital share specified in Subsection 26-36b-204(1)(d); and
3699	(b) non-state government hospitals are responsible for:
3700	(i) 1% of the portion of the hospital share specified in Subsections 26-36b-204(1)(a)
3701	through (c); and
3702	(ii) 0% of the hospital share specified in Subsection 26-36b-204(1)(d).
3703	(4) The department shall, by rule made in accordance with Title 63G, Chapter 3, Utah
3704	Administrative Rulemaking Act, designate:
3705	(a) the method of calculating the amounts designated in Subsection (3); and
3706	(b) the schedule for the intergovernmental transfers.
3707	
3708	[26-36b-207.] <u>26B-3-509.</u> Penalties and interest.
3709	(1) A hospital that fails to pay a quarterly assessment, make the mandated
3710	intergovernmental transfer, or file a return as required under this [chapter] part, within the

time required by this [chapter] part, shall pay penalties described in this section, in addition to the assessment or intergovernmental transfer.

- (2) If a hospital fails to timely pay the full amount of a quarterly assessment or the mandated intergovernmental transfer, the department shall add to the assessment or intergovernmental transfer:
- 3716 (a) a penalty equal to 5% of the quarterly amount not paid on or before the due date; 3717 and
 - (b) on the last day of each quarter after the due date until the assessed amount and the penalty imposed under Subsection (2)(a) are paid in full, an additional 5% penalty on:
 - (i) any unpaid quarterly assessment or intergovernmental transfer; and
 - (ii) any unpaid penalty assessment.

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(3) Upon making a record of the division's actions, and upon reasonable cause shown, the division may waive, reduce, or compromise any of the penalties imposed under this [chapter] part.

[26-36b-209.] <u>26B-3-510.</u> Hospital reimbursement.

- (1) If the health coverage improvement program, the enhancement waiver program, or the Medicaid waiver expansion is implemented by contracting with a Medicaid accountable care organization, the department shall, to the extent allowed by law, include, in a contract to provide benefits under the health coverage improvement program, the enhancement waiver program, or the Medicaid waiver expansion, a requirement that the Medicaid accountable care organization reimburse hospitals in the accountable care organization's provider network at no less than the Medicaid fee-for-service rate.
- (2) If the health coverage improvement program, the enhancement waiver program, or the Medicaid waiver expansion is implemented by the department as a fee-for-service program, the department shall reimburse hospitals at no less than the Medicaid fee-for-service rate.
- (3) Nothing in this section prohibits a Medicaid accountable care organization from paying a rate that exceeds the Medicaid fee-for-service rate.
- 3741 [26-36b-210.] 26B-3-511. Outpatient upper payment limit supplemental payments.

- 3743 (1) Beginning on the effective date of the assessment imposed under this [chapter]
 3744 part, and for each subsequent fiscal year, the department shall implement an outpatient
 3745 upper payment limit program for private hospitals that shall supplement the reimbursement to
 3746 private hospitals in accordance with Subsection (2).
- 3747 (2) The division shall ensure that supplemental payment to Utah private hospitals under Subsection (1):
 - (a) does not exceed the positive upper payment limit gap; and
- 3750 (b) is allocated based on the Medicaid state plan.
- 3751 (3) The department shall use the same outpatient data to allocate the payments under Subsection (2) and to calculate the upper payment limit gap.
 - (4) The supplemental payments to private hospitals under Subsection (1) are payable for outpatient hospital services provided on or after the later of:
 - (a) July 1, 2016;

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- 3756 (b) the effective date of the Medicaid state plan amendment necessary to implement 3757 the payments under this section; or
 - (c) the effective date of the coverage provided through the health coverage improvement program waiver.

[26-36b-211.] <u>26B-3-512.</u> Repeal of assessment.

- (1) The assessment imposed by this [chapter] part shall be repealed when:
- (a) the executive director certifies that:
- (i) action by Congress is in effect that disqualifies the assessment imposed by this [chapter] part from counting toward state Medicaid funds available to be used to determine the amount of federal financial participation;
- (ii) a decision, enactment, or other determination by the Legislature or by any court, officer, department, or agency of the state, or of the federal government, is in effect that:
- (A) disqualifies the assessment from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds; or
- (B) creates for any reason a failure of the state to use the assessments for at least one of the Medicaid programs described in this [chapter] part; or
- 3773 (iii) a change is in effect that reduces the aggregate hospital inpatient and outpatient payment rate below the aggregate hospital inpatient and outpatient payment rate for July 1,

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3775	2015; or
3776	(b) this [chapter] part is repealed in accordance with Section 63I-1-226.
3777	(2) If the assessment is repealed under Subsection (1):
3778	(a) the division may not collect any assessment or intergovernmental transfer under
3779	this [chapter] <u>part</u> ;
3780	(b) the department shall disburse money in the special Medicaid Expansion Fund in
3781	accordance with the requirements in Subsection 26-36b-208(4), to the extent federal
3782	matching is not reduced by CMS due to the repeal of the assessment;
3783	(c) any money remaining in the Medicaid Expansion Fund after the disbursement
3784	described in Subsection (2)(b) that was derived from assessments imposed by this [chapter]
3785	part shall be refunded to the hospitals in proportion to the amount paid by each hospital for
3786	the last three fiscal years; and
3787	(d) any money remaining in the Medicaid Expansion Fund after the disbursements
3788	described in Subsections (2)(b) and (c) shall be deposited into the General Fund by the end
3789	of the fiscal year that the assessment is suspended.
3790	
3791	Part 6. Medicaid Expansion Hospital Assessment.
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3793	[26-36c-102.] <u>26B-3-601.</u> Definitions.
3794	As used in this [chapter] <u>part</u> :
3795	(1) "Assessment" means the Medicaid expansion hospital assessment established by
3796	this [chapter] <u>part</u> .
3797	(2) "CMS" means the Centers for Medicare and Medicaid Services within the United
3798	States Department of Health and Human Services.
3799	(3) "Discharges" means the number of total hospital discharges reported on:
3800	(a) Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare
3801	cost report for the applicable assessment year; or
3802	(b) a similar report adopted by the department by administrative rule, if the report
3803	under Subsection (3)(a) is no longer available.
3804	(4) "Division" means the Division of Health Care Financing within the department.

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(5) "Hospital share" means the hospital share described in Section 26-36c-203.

(6) "Medicaid accountable care organization" means a managed care organization, as

3807	defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of
3808	Section 26-18-405.
3809	(7) "Medicaid Expansion Fund" means the Medicaid Expansion Fund created in
3810	Section 26-36b-208.
3811	(8) "Medicaid waiver expansion" means the same as that term is defined in Section
3812	26-18-415.
3813	(9) "Medicare cost report" means CMS-2552-10, the cost report for electronic filing of
3814	hospitals.
3815	(10) (a) "Non-state government hospital" means a hospital owned by a non-state
3816	government entity.
3817	(b) "Non-state government hospital" does not include:
3818	(i) the Utah State Hospital; or
3819	(ii) a hospital owned by the federal government, including the Veterans Administration
3820	Hospital.
3821	(11) (a) "Private hospital" means:
3822	(i) a privately owned general acute hospital operating in the state as defined in
3823	Section 26-21-2; or
3824	(ii) a privately owned specialty hospital operating in the state, including a privately
3825	owned hospital for which inpatient admissions are predominantly:
3826	(A) rehabilitation;
3827	(B) psychiatric;
3828	(C) chemical dependency; or
3829	(D) long-term acute care services.
3830	(b) "Private hospital" does not include a facility for residential treatment as defined in
3831	Section 62A-2-101.
3832	(12) "Qualified Medicaid expansion" means an expansion of the Medicaid program in
3833	accordance with Subsection 26-18-3.9(5).
3834	(13) "State teaching hospital" means a state owned teaching hospital that is part of an
3835	institution of higher education.
3836	
3837	[26-36c-103.] <u>26B-3-602.</u> Application.
3838	(1) Other than for the imposition of the assessment described in this [chapter] part,

3839	nothing in this [chapter] part shall affect the nonprofit or tax exempt status of any nonprofit
3840	charitable, religious, or educational health care provider under any:
3841	(a) state law;
3842	(b) ad valorem property tax requirement;
3843	(c) sales or use tax requirement; or
3844	(d) other requirements imposed by taxes, fees, or assessments, whether imposed or
3845	sought to be imposed, by the state or any political subdivision of the state.
3846	(2) A hospital paying an assessment under this [chapter] part may include the
3847	assessment as an allowable cost of a hospital for purposes of any applicable Medicaid
3848	reimbursement formula.
3849	(3) This [chapter] part does not authorize a political subdivision of the state to:
3850	(a) license a hospital for revenue;
3851	(b) impose a tax or assessment upon a hospital; or
3852	(c) impose a tax or assessment measured by the income or earnings of a hospital.
3853	
3854	[26-36c-201.] <u>26B-3-603.</u> Assessment.
3855	(1) An assessment is imposed on each private hospital:
3856	(a) beginning upon the later of:
3857	(i) April 1, 2019; and
3858	(ii) CMS approval of the assessment under this [chapter] part;
3859	(b) in the amount designated in Sections 26-36c-204 and 26-36c-205; and
3860	(c) in accordance with Section 26-36c-202.
3861	(2) The assessment imposed by this [chapter] part is due and payable in
3862	accordance with Subsection 26-36c-202(4).
3863	
3864	[26-36c-202.] <u>26B-3-604.</u> Collection of assessment Deposit of revenue
3865	Rulemaking.
3866	(1) The department shall act as the collecting agent for the assessment imposed
3867	under Section 26-36c-201.
3868	(2) The department shall administer and enforce the provisions of this [chapter] part,

Rulemaking Act, necessary to:

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and may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

3871	(a) collect the assessment, intergovernmental transfers, and penalties imposed under
3872	this [chapter] <u>part</u> ;
3873	(b) audit records of a facility that:
3874	(i) is subject to the assessment imposed under this [chapter] part; and
3875	(ii) does not file a Medicare cost report; and
3876	(c) select a report similar to the Medicare cost report if Medicare no longer uses a
3877	Medicare cost report.
3878	(3) The department shall:
3879	(a) administer the assessment in this part separately from the assessments in
3880	Chapter 36d, Hospital Provider Assessment Act, and Chapter 36b, Inpatient Hospital
3881	Assessment Act; and
3882	(b) deposit assessments collected under this [chapter] part into the Medicaid
3883	Expansion Fund.
3884	(4) (a) Hospitals shall pay the quarterly assessments imposed by this [chapter] part
3885	to the division within 15 business days after the original invoice date that appears on the
3886	invoice issued by the division.
3887	(b) The department may make rules creating requirements to allow the time for
3888	paying the assessment to be extended.
3889	
3890	[26-36c-203.] <u>26B-3-605.</u> Hospital share.
3891	(1) The hospital share is:
3892	(a) for the period from April 1, 2019, through June 30, 2020, \$15,000,000; and
3893	(b) beginning July 1, 2020, 100% of the state's net cost of the qualified Medicaid
3894	expansion, after deducting appropriate offsets and savings expected as a result of
3895	implementing the qualified Medicaid expansion, including:
3896	(i) savings from:
3897	(A) the Primary Care Network program;
3898	(B) the health coverage improvement program, as defined in Section 26-18-411;
3899	(C) the state portion of inpatient prison medical coverage;
3900	(D) behavioral health coverage; and
3901	(E) county contributions to the non-federal share of Medicaid expenditures; and
3902	(ii) any funds appropriated to the Medicaid Expansion Fund.

- 3903 (2) (a) Beginning July 1, 2020, the hospital share is capped at no more than \$15,000,000 annually.
- 3905 (b) Beginning July 1, 2020, the division shall prorate the cap specified in Subsection 3906 (2)(a) in any year in which the qualified Medicaid expansion is not in effect for the full fiscal 3907 year.

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[26-36c-204.] 26B-3-606. Hospital financing.

- 3910 (1) Private hospitals shall be assessed under this [chapter] part for the portion of the hospital share described in Section 26-36c-209.
- 3912 (2) In the report described in Subsection 26-18-3.9(8), the department shall calculate 3913 the state's net cost of the qualified Medicaid expansion.
 - (3) If the assessment collected in the previous fiscal year is above or below the hospital share for private hospitals for the previous fiscal year, the division shall apply the underpayment or overpayment of the assessment by the private hospitals to the fiscal year in which the report is issued.

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[26-36c-205.] 26B-3-607. Calculation of assessment.

- (1) (a) Except as provided in Subsection (1)(b), each private hospital shall pay an annual assessment due on the last day of each quarter in an amount calculated by the division at a uniform assessment rate for each hospital discharge, in accordance with this section.
- (b) A private teaching hospital with more than 425 beds and more than 60 residents shall pay an assessment rate 2.5 times the uniform rate established under Subsection (1)(c).
- 3926 (c) The division shall calculate the uniform assessment rate described in Subsection 3927 (1)(a) by dividing the hospital share for assessed private hospitals, as described in 3928 Subsection 26-36c-204(1), by the sum of:
- 3929 (i) the total number of discharges for assessed private hospitals that are not a private teaching hospital; and
- 3931 (ii) 2.5 times the number of discharges for a private teaching hospital, described in 3932 Subsection (1)(b).
- 3933 (d) The division may make rules in accordance with Title 63G, Chapter 3, Utah 3934 Administrative Rulemaking Act, to adjust the formula described in Subsection (1)(c) to

address unforeseen circumstances in the administration of the assessment under this [chapter] part.

- 3937 (e) The division shall apply any quarterly changes to the uniform assessment rate 3938 uniformly to all assessed private hospitals.
 - (2) Except as provided in Subsection (3), for each state fiscal year, the division shall determine a hospital's discharges as follows:
 - (a) for state fiscal year 2019, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2015, and June 30, 2016; and
 - (b) for each subsequent state fiscal year, the hospital's cost report data for the hospital's fiscal year that ended in the state fiscal year two years before the assessment fiscal year.
 - (3) (a) If a hospital's fiscal year Medicare cost report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file:
 - (i) the hospital shall submit to the division a copy of the hospital's Medicare cost report applicable to the assessment year; and
 - (ii) the division shall determine the hospital's discharges.
- 3951 (b) If a hospital is not certified by the Medicare program and is not required to file a 3952 Medicare cost report:
 - (i) the hospital shall submit to the division the hospital's applicable fiscal year discharges with supporting documentation;
 - (ii) the division shall determine the hospital's discharges from the information submitted under Subsection (3)(b)(i); and
 - (iii) if the hospital fails to submit discharge information, the division shall audit the hospital's records and may impose a penalty equal to 5% of the calculated assessment.
 - (4) Except as provided in Subsection (5), if a hospital is owned by an organization that owns more than one hospital in the state:
 - (a) the division shall calculate the assessment for each hospital separately; and
 - (b) each separate hospital shall pay the assessment imposed by this [chapter] part.
 - (5) If multiple hospitals use the same Medicaid provider number:
- 3964 (a) the department shall calculate the assessment in the aggregate for the hospitals 3965 using the same Medicaid provider number; and
 - (b) the hospitals may pay the assessment in the aggregate.

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3967	[26-36c-206.] <u>26B-3-608.</u> State teaching hospital and non-state government
3968	hospital mandatory intergovernmental transfer.
3969	(1) A state teaching hospital and a non-state government hospital shall make an
3970	intergovernmental transfer to the Medicaid Expansion Fund, in accordance with this section.
3971	(2) The hospitals described in Subsection (1) shall pay the intergovernmental transfer
3972	beginning on the later of:
3973	(a) April 1, 2019; or
3974	(b) CMS approval of the assessment for private hospitals in this [chapter] part.
3975	(3) The intergovernmental transfer is apportioned between the non-state government
3976	hospitals as follows:
3977	(a) the state teaching hospital shall pay for the portion of the hospital share described
3978	in Section 26-36c-209; and
3979	(b) non-state government hospitals shall pay for the portion of the hospital share
3980	described in Section 26-36c-209.
3981	(4) The department shall, by rule made in accordance with Title 63G, Chapter 3, Utah
3982	Administrative Rulemaking Act, designate:
3983	(a) the method of calculating the amounts designated in Subsection (3); and
3984	(b) the schedule for the intergovernmental transfers.
3985	
3986	[26-36c-207.] <u>26B-3-609.</u> Penalties.
3987	(1) A hospital that fails to pay a quarterly assessment, make the mandated
3988	intergovernmental transfer, or file a return as required under this [chapter] part, within the
3989	time required by this [chapter] part, shall pay penalties described in this section, in addition
3990	to the assessment or intergovernmental transfer.
3991	(2) If a hospital fails to timely pay the full amount of a quarterly assessment or the
3992	mandated intergovernmental transfer, the department shall add to the assessment or
3993	intergovernmental transfer:
3994	(a) a penalty equal to 5% of the quarterly amount not paid on or before the due date;
3995	and
3996	(b) on the last day of each quarter after the due date until the assessed amount and
3997	the penalty imposed under Subsection (2)(a) are paid in full, an additional 5% penalty on:

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(i) any unpaid quarterly assessment or intergovernmental transfer; and

- (ii) any unpaid penalty assessment.
- 4000 (3) Upon making a record of the division's actions, and upon reasonable cause
 4001 shown, the division may waive or reduce any of the penalties imposed under this [chapter]
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[26-36c-208.] <u>26B-3-610.</u> Hospital reimbursement.

- (1) If the qualified Medicaid expansion is implemented by contracting with a Medicaid accountable care organization, the department shall, to the extent allowed by law, include in a contract to provide benefits under the qualified Medicaid expansion a requirement that the accountable care organization reimburse hospitals in the accountable care organization's provider network at no less than the Medicaid fee-for-service rate.
- (2) If the qualified Medicaid expansion is implemented by the department as a fee-for-service program, the department shall reimburse hospitals at no less than the Medicaid fee-for-service rate.
- (3) Nothing in this section prohibits the department or a Medicaid accountable care organization from paying a rate that exceeds the Medicaid fee-for-service rate.

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[26-36c-209.] <u>26B-3-611.</u> Hospital financing of the hospital share.

- 4017 (1) For the first two full fiscal years that the assessment is in effect, the department 4018 shall:
 - (a) assess private hospitals under this [chapter] part for 69% of the hospital share;
 - (b) require the state teaching hospital to make an intergovernmental transfer under this [chapter] part for 30% of the hospital share; and
 - (c) require non-state government hospitals to make an intergovernmental transfer under this [chapter] part for 1% of the hospital share.
 - (2) (a) At the beginning of the third full fiscal year that the assessment is in effect, and at the beginning of each subsequent fiscal year, the department may set a different percentage share for private hospitals, the state teaching hospital, and non-state government hospitals by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, with input from private hospitals and private teaching hospitals.
- (b) If the department does not set a different percentage share under Subsection (2)(a), the percentage shares in Subsection (1) shall apply.

4031	[26-36c-210.] <u>26B-3-612.</u> Suspension of assessment.
4032	(1) The department shall suspend the assessment imposed by this [chapter] part
4033	when the executive director certifies that:
4034	(a) action by Congress is in effect that disqualifies the assessment imposed by this
4035	[chapter] part from counting toward state Medicaid funds available to be used to determine
4036	the amount of federal financial participation;
4037	(b) a decision, enactment, or other determination by the Legislature or by any court,
4038	officer, department, or agency of the state, or of the federal government, is in effect that:
4039	(i) disqualifies the assessment from counting toward state Medicaid funds available to
4040	be used to determine federal financial participation for Medicaid matching funds; or
4041	(ii) creates for any reason a failure of the state to use the assessments for at least
4042	one of the Medicaid programs described in this [chapter] part; or
4043	(c) a change is in effect that reduces the aggregate hospital inpatient and outpatient
4044	payment rate below the aggregate hospital inpatient and outpatient payment rate for July 1,
4045	2015.
4046	(2) If the assessment is suspended under Subsection (1):
4047	(a) the division may not collect any assessment or intergovernmental transfer under
4048	this [chapter] <u>part</u> ;
4049	(b) the division shall disburse money in the Medicaid Expansion Fund that was
4050	derived from assessments imposed by this [chapter] part in accordance with the
4051	requirements in Subsection 26-36b-208(4), to the extent federal matching is not reduced by
4052	CMS due to the repeal of the assessment; and
4053	(c) the division shall refund any money remaining in the Medicaid Expansion Fund
4054	after the disbursement described in Subsection (2)(b) that was derived from assessments
4055	imposed by this [chapter] part to the hospitals in proportion to the amount paid by each
4056	hospital for the last three fiscal years.
4057	
4058	Part 7. Hospital Provider Assessment.
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4060	[26-36d-103.] <u>26B-3-701.</u> Definitions.
4061	As used in this [chapter] <u>part</u> :

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(1) "Accountable care organization" means a managed care organization, as defined

4063 in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section 4064 26-18-405. (2) "Assessment" means the Medicaid hospital provider assessment established by 4065 this [chapter] part. 4066 4067 (3) "Discharges" means the number of total hospital discharges reported on Worksheet S-3 Part I, column 15, lines 12, 14, and 14.01 of the 2552-96 Medicare Cost 4068 4069 Report or on Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare 4070 Cost Report for the applicable assessment year. 4071 (4) "Division" means the Division of Health Care Financing of the department. 4072 (5) "Hospital": 4073 (a) means a privately owned: 4074 (i) general acute hospital operating in the state as defined in Section 26-21-2; and 4075 (ii) specialty hospital operating in the state, which shall include a privately owned 4076 hospital whose inpatient admissions are predominantly: 4077 (A) rehabilitation; 4078 (B) psychiatric; 4079 (C) chemical dependency; or 4080 (D) long-term acute care services; and 4081 (b) does not include: 4082 (i) a human services program, as defined in Section 62A-2-101; 4083 (ii) a hospital owned by the federal government, including the Veterans Administration 4084 Hospital; or 4085 (iii) a hospital that is owned by the state government, a state agency, or a political 4086 subdivision of the state, including: 4087 (A) a state-owned teaching hospital; and 4088 (B) the Utah State Hospital. 4089 (6) "Medicare Cost Report" means CMS-2552-96 or CMS-2552-10, the cost report for 4090 electronic filing of hospitals. 4091 (7) "State plan amendment" means a change or update to the state Medicaid plan. 4092 4093 [26-36d-102.] **26B-3-702**. Legislative findings.

(1) The Legislature finds that there is an important state purpose to improve the

4095	access of Medicaid patients to quality care in Utah hospitals because of continuous
4096	decreases in state revenues and increases in enrollment under the Utah Medicaid program

- 4097 (2) The Legislature finds that in order to improve this access to those persons described in Subsection (1):
 - (a) the rates paid to Utah hospitals shall be adequate to encourage and support improved access; and
 - (b) adequate funding shall be provided to increase the rates paid to Utah hospitals providing services pursuant to the Utah Medicaid program.

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[26-36d-201.] <u>26B-3-703.</u> Application of [chapter] <u>part</u>.

- 4105 (1) Other than for the imposition of the assessment described in this [chapter] part,
 4106 nothing in this [chapter] part shall affect the nonprofit or tax exempt status of any nonprofit
 4107 charitable, religious, or educational health care provider under:
 - (a) Section 501(c), as amended, of the Internal Revenue Code;
 - (b) other applicable federal law;
- 4110 (c) any state law;
 - (d) any ad valorem property taxes;
- 4112 (e) any sales or use taxes; or
- 4113 (f) any other taxes, fees, or assessments, whether imposed or sought to be imposed 4114 by the state or any political subdivision, county, municipality, district, authority, or any agency 4115 or department thereof.
 - (2) All assessments paid under this [chapter] <u>part</u> may be included as an allowable cost of a hospital for purposes of any applicable Medicaid reimbursement formula.
 - (3) This [chapter] part does not authorize a political subdivision of the state to:
- 4119 (a) license a hospital for revenue;
- (b) impose a tax or assessment upon hospitals; or
- 4121 (c) impose a tax or assessment measured by the income or earnings of a hospital.

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4123 [26-36d-202.] 26B-3-704. Assessment, collection, and payment of hospital provider assessment.

4125 (1) A uniform, broad based, assessment is imposed on each hospital as defined in 4126 Subsection 26-36d-103(5)(a):

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4127	(a) in the amount designated in Section 26-36d-203; and
4128	(b) in accordance with Section 26-36d-204.
4129	(2) (a) The assessment imposed by this [chapter] part is due and payable on a
4130	quarterly basis in accordance with Section 26-36d-204.
4131	(b) The collecting agent for this assessment is the department which is vested with
4132	the administration and enforcement of this [chapter] part, including the right to adopt
4133	administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
4134	Act, necessary to:
4135	(i) implement and enforce the provisions of this act; and
4136	(ii) audit records of a facility:
4137	(A) that is subject to the assessment imposed by this [chapter] part; and
4138	(B) does not file a Medicare Cost Report.
4139	(c) The department shall forward proceeds from the assessment imposed by this
4140	[chapter] part to the state treasurer for deposit in the expendable special revenue fund as
4141	specified in Section 26-36d-207.
4142	(3) The department may, by rule, extend the time for paying the assessment.
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4144	[26-36d-203.] <u>26B-3-705.</u> Calculation of assessment.
4145	(1) (a) An annual assessment is payable on a quarterly basis for each hospital in an
4146	amount calculated at a uniform assessment rate for each hospital discharge, in accordance
4147	with this section.
4148	(b) The uniform assessment rate shall be determined using the total number of
4149	hospital discharges for assessed hospitals divided into the total non-federal portion in an
4150	amount consistent with Section 26-36d-205 that is needed to support capitated rates for
4151	accountable care organizations for purposes of hospital services provided to Medicaid
4152	enrollees.
4153	(c) Any quarterly changes to the uniform assessment rate shall be applied uniformly
4154	to all assessed hospitals.
4155	(d) The annual uniform assessment rate may not generate more than:

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(ii) the non-federal share to seed amounts needed to support capitated rates for

(i) \$1,000,000 to offset Medicaid mandatory expenditures; and

accountable care organizations as provided for in Subsection (1)(b).

- 4159 (2) (a) For each state fiscal year, discharges shall be determined using the data from 4160 each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid 4161 Services' Healthcare Cost Report Information System file. The hospital's discharge data will 4162 be derived as follows:
- 4163 (i) for state fiscal year 2013, the hospital's cost report data for the hospital's fiscal year 4164 ending between July 1, 2009, and June 30, 2010;
- 4165 (ii) for state fiscal year 2014, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2010, and June 30, 2011;
- 4167 (iii) for state fiscal year 2015, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2011, and June 30, 2012;
- 4169 (iv) for state fiscal year 2016, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2012, and June 30, 2013; and
- 4171 (v) for each subsequent state fiscal year, the hospital's cost report data for the 4172 hospital's fiscal year that ended in the state fiscal year two years prior to the assessment 4173 fiscal year.
- 4174 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file:
 - (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost Report applicable to the assessment year; and
 - (ii) the division shall determine the hospital's discharges.
 - (c) If a hospital is not certified by the Medicare program and is not required to file a Medicare Cost Report:
- 4181 (i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;
- 4183 (ii) the division shall determine the hospital's discharges from the information 4184 submitted under Subsection (2)(c)(i); and
- 4185 (iii) the failure to submit discharge information shall result in an audit of the hospital's records and a penalty equal to 5% of the calculated assessment.
- 4187 (3) Except as provided in Subsection (4), if a hospital is owned by an organization that owns more than one hospital in the state:
- 4189 (a) the assessment for each hospital shall be separately calculated by the 4190 department; and

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- (b) each separate hospital shall pay the assessment imposed by this [chapter] part.
- 4192 (4) Notwithstanding the requirement of Subsection (3), if multiple hospitals use the 4193 same Medicaid provider number:
 - (a) the department shall calculate the assessment in the aggregate for the hospitals using the same Medicaid provider number; and
 - (b) the hospitals may pay the assessment in the aggregate.

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- [26-36d-204.] <u>26B-3-706.</u> Quarterly notice -- Collection.
- Quarterly assessments imposed by this [chapter] part shall be paid to the division within 15 business days after the original invoice date that appears on the invoice issued by the division.

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[26-36d-205.] <u>26B-3-707.</u> Medicaid hospital adjustment under accountable care organization rates.

To preserve and improve access to hospital services, the division shall, for accountable care organization rates effective on or after April 1, 2013, incorporate into the accountable care organization rate structure calculation consistent with the certified actuarial rate range:

- (1) \$154,000,000 to be allocated toward the hospital inpatient directed payments for the Medicaid eligibility categories covered in Utah before January 1, 2019; and
- (2) an amount equal to the difference between payments made to hospitals by accountable care organizations for the Medicaid eligibility categories covered in Utah before January 1, 2019, based on submitted encounter data and the maximum amount that could be paid for those services using Medicare payment principles to be used for directed payments to hospitals for outpatient services.

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- 4217 [26-36d-206.] 26B-3-708. Penalties and interest.
- (1) A facility that fails to pay any assessment or file a return as required under this [chapter] part, within the time required by this [chapter] part, shall pay, in addition to the assessment, penalties and interest established by the department.
 - (2) (a) Consistent with Subsection (2)(b), the department shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish

- reasonable penalties and interest for the violations described in Subsection (1).
- 4224 (b) If a hospital fails to timely pay the full amount of a quarterly assessment, the department shall add to the assessment:
- 4226 (i) a penalty equal to 5% of the quarterly amount not paid on or before the due date; 4227 and
 - (ii) on the last day of each quarter after the due date until the assessed amount and the penalty imposed under Subsection (2)(b)(i) are paid in full, an additional 5% penalty on:
 - (A) any unpaid quarterly assessment; and
- 4231 (B) any unpaid penalty assessment.

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4232 (c) Upon making a record of its actions, and upon reasonable cause shown, the division may waive, reduce, or compromise any of the penalties imposed under this part.

4235 [26-36d-208.] <u>26B-3-709.</u> Repeal of assessment.

- (1) The repeal of the assessment imposed by this [chapter] part shall occur upon the certification by the executive director of the department that the sooner of the following has occurred:
- (a) the effective date of any action by Congress that would disqualify the assessment imposed by this [chapter] part from counting toward state Medicaid funds available to be used to determine the federal financial participation;
- (b) the effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, or agency of the state, or of the federal government that has the effect of:
- (i) disqualifying the assessment from counting towards state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds; or
- (ii) creating for any reason a failure of the state to use the assessments for the Medicaid program as described in this [chapter] part;
 - (c) the effective date of:
- 4250 (i) an appropriation for any state fiscal year from the General Fund for hospital 4251 payments under the state Medicaid program that is less than the amount appropriated for 4252 state fiscal year 2012;
- 4253 (ii) the annual revenues of the state General Fund budget return to the level that was appropriated for fiscal year 2008;

4255	(iii) a division change in rules that reduces any of the following below July 1, 2011,
4256	payments:
4257	(A) aggregate hospital inpatient payments;
4258	(B) adjustment payment rates; or
4259	(C) any cost settlement protocol; or
4260	(iv) a division change in rules that reduces the aggregate outpatient payments below
4261	July 1, 2011, payments; and
4262	(d) the sunset of this [chapter] part in accordance with Section 63I-1-226.
4263	(2) If the assessment is repealed under Subsection (1), money in the fund that was
4264	derived from assessments imposed by this [chapter] part, before the determination made
4265	under Subsection (1), shall be disbursed under Section 26-36d-205 to the extent federal
4266	matching is not reduced due to the impermissibility of the assessments. Any funds remaining
4267	in the special revenue fund shall be refunded to the hospitals in proportion to the amount
4268	paid by each hospital.
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4270	Part 8. Ambulance Service Provider Assessment.
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	[26-37a-102.] <u>26B-3-801.</u> Definitions.
4271 4272 4273	[26-37a-102.] <u>26B-3-801.</u> Definitions. As used in this [chapter] <u>part</u> :
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4272 4273	As used in this [chapter] <u>part</u> :
4272 4273 4274	As used in this [chapter] <u>part</u> : (1) "Ambulance service provider" means:
4272 4273 4274 4275 4276	As used in this [chapter] part: (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] 26B-2-XXX; or
4272 4273 4274 4275	As used in this [chapter] part: (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] 26B-2-XXX; or (b) a non-911 service provider as defined in Section [26-8a-102] 26B-2-XXX.
4272 4273 4274 4275 4276 4277	As used in this [chapter] part: (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] 26B-2-XXX; or (b) a non-911 service provider as defined in Section [26-8a-102] 26B-2-XXX. (2) "Assessment" means the Medicaid ambulance service provider assessment
4272 4273 4274 4275 4276 4277 4278	As used in this [chapter] part: (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] 26B-2-XXX; or (b) a non-911 service provider as defined in Section [26-8a-102] 26B-2-XXX. (2) "Assessment" means the Medicaid ambulance service provider assessment established by this [chapter] part.
4272 4273 4274 4275 4276 4277 4278 4279	As used in this [chapter] _part : (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] _26B-2-XXX; or (b) a non-911 service provider as defined in Section [26-8a-102] _26B-2-XXX. (2) "Assessment" means the Medicaid ambulance service provider assessment established by this [chapter] _part . (3) "Division" means the Division of Health Care Financing within the department.
4272 4273 4274 4275 4276 4277 4278 4279 4280	As used in this [chapter] part: (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] 26B-2-XXX; or (b) a non-911 service provider as defined in Section [26-8a-102] 26B-2-XXX. (2) "Assessment" means the Medicaid ambulance service provider assessment established by this [chapter] part. (3) "Division" means the Division of Health Care Financing within the department. (4) "Non-federal portion" means the non-federal share the division needs to seed
4272 4273 4274 4275 4276 4277 4278 4279 4280 4281	As used in this [chapter] part: (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] 26B-2-XXX; or (b) a non-911 service provider as defined in Section [26-8a-102] 26B-2-XXX. (2) "Assessment" means the Medicaid ambulance service provider assessment established by this [chapter] part. (3) "Division" means the Division of Health Care Financing within the department. (4) "Non-federal portion" means the non-federal share the division needs to seed amounts that will support fee-for-service ambulance service provider rates, as described in
4272 4273 4274 4275 4276 4277 4278 4279 4280 4281 4282	As used in this [chapter] _part : (1) "Ambulance service provider" means: (a) an ambulance provider as defined in Section [26-8a-102] _26B-2-XXX_; or (b) a non-911 service provider as defined in Section [26-8a-102] _26B-2-XXX (2) "Assessment" means the Medicaid ambulance service provider assessment established by this [chapter] _part (3) "Division" means the Division of Health Care Financing within the department. (4) "Non-federal portion" means the non-federal share the division needs to seed amounts that will support fee-for-service ambulance service provider rates, as described in Section 26-37a-105.

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[26-37a-103.] <u>26B-3-802.</u> Assessment, collection, and payment of ambulance

4287	service provider assessment.
4288	(1) An ambulance service provider shall pay an assessment to the division:
4289	(a) in the amount designated in Section 26-37a-104;
4290	(b) in accordance with this [chapter] part;
4291	(c) quarterly, on a day determined by the division by rule made under Subsection
4292	(2)(b); and
4293	(d) no more than 15 business days after the day on which the division issues the
4294	ambulance service provider notice of the assessment.
4295	(2) The division shall:
4296	(a) collect the assessment described in Subsection (1);
4297	(b) determine, by rule made in accordance with Title 63G, Chapter 3, Utah
4298	Administrative Rulemaking Act, standards and procedures for implementing and enforcing
4299	the provisions of this [chapter] <u>part</u> ; and
4300	(c) transfer assessment proceeds to the state treasurer for deposit into the
4301	Ambulance Service Provider Assessment Expendable Revenue Fund created in Section
4302	[26-37a-107] <u>26B-1-XXX</u> .
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4304	[26-37a-104.] <u>26B-3-803.</u> Calculation of assessment.
4305	(1) The division shall calculate a uniform assessment per transport as described in
4306	this section.
4307	(2) The assessment due from a given ambulance service provider equals the
4308	non-federal portion divided by total transports, multiplied by the number of transports for the
4309	ambulance service provider.
4310	(3) The division shall apply any quarterly changes to the assessment rate, calculated
4311	as described in Subsection (2), uniformly to all assessed ambulance service providers.
4312	(4) The assessment may not generate more than the total of:
4313	(a) an annual amount of \$20,000 to offset Medicaid administration expenses; and
4314	(b) the non-federal portion.
4315	(5) (a) For each state fiscal year, the division shall calculate total transports using
4316	data from the Emergency Medical System as follows:
4317	(i) for state fiscal year 2016, the division shall use ambulance service provider
4318	transports during the 2014 calendar year; and

- 4319 (ii) for a fiscal year after 2016, the division shall use ambulance service provider 4320 transports during the calendar year ending 18 months before the end of the fiscal year.
- (b) If an ambulance service provider fails to submit transport information to the Emergency Medical System, the division may audit the ambulance service provider to determine the ambulance service provider's transports for a given fiscal year.

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[26-37a-105.] <u>26B-3-804.</u> Medicaid ambulance service provider adjustment under fee-for-service rates.

The division shall, if the assessment imposed by this [chapter] _part_ is approved by the Centers for Medicare and Medicaid Services, for fee-for-service rates effective on or after July 1, 2015, reimburse an ambulance service provider in an amount up to the Emergency Medical Services Ambulance Rates adopted annually by the department.

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[26-37a-106.] <u>26B-3-805.</u> Penalties.

The division shall require an ambulance service provider that fails to pay an assessment due under this [chapter] part to pay the division, in addition to the assessment, a penalty determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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[26-37a-108.] 26B-3-806. Repeal of assessment.

- (1) This [chapter] part is repealed when, as certified by the executive director of the department, any of the following occurs:
- (a) an action by Congress that disqualifies the assessment imposed by this [chapter]

 part from state Medicaid funds available to be used to determine the federal financial participation takes legal effect; or
- (b) an action, decision, enactment, or other determination by the Legislature or by any court, officer, department, or agency of the state or federal government takes effect that:
- (i) disqualifies the assessment from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds; or
- (ii) creates for any reason a failure of the state to use the assessments for the Medicaid program as described in this [chapter] part.
- 4350 (2) If this [chapter] part is repealed under Subsection (1):

4351	(a) money in the Ambulance Service Provider Assessment Expendable Revenue					
4352	Fund that was derived from assessments imposed by this [chapter] part, deposited before					
4353	the determination made under Subsection (1), shall be disbursed under Section [26-37a-107]					
4354	26B-3-XXX to the extent federal matching is not reduced due to the impermissibility of the					
4355	assessments; and					
4356	(b) any funds remaining in the special revenue fund shall be refunded to each					
4357	ambulance service provider in proportion to the amount paid by the ambulance service					
4358	provider.					
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4361	Part 9. Utah Children's Health Insurance Program.					
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4363	[26-40-102.] <u>26B-3-91.</u> Definitions.					
4364	As used in this [chapter] <u>part</u> :					
4365	(1) "Child" means [a person who is under 19 years of age] <u>an individual who is</u>					
4366	younger than 19 years old.					
4367	(2) "Eligible child" means a child who qualifies for enrollment in the program as					
4368	provided in Section [26-40-105] <u>26B-3-904</u> .					
4369	(3) "Member" means a child enrolled in the program.					
4370	(4) "Plan" means the department's plan submitted to the United States Department of					
4371	Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.					
4372	(5) "Program" means the Utah Children's Health Insurance Program created by this					
4373	chapter.					
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4375	[26-40-103.] <u>26B-3-902.</u> Creation and administration of the Utah Children's					
4376	Health Insurance Program.					
4377	(1) There is created the Utah Children's Health Insurance Program to be administered					
4378	by the department in accordance with the provisions of:					
4379	(a) this chapter; and					
4380	(b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.					
4381	(2) The department shall:					
4382	(a) prepare and submit the state's children's health insurance plan before May 1,					

1998, and any amendments to the federal Department of Health and Human Services in 4383 4384 accordance with 42 U.S.C. Sec. 1397ff; and (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative 4385 Rulemaking Act regarding: 4386 4387 (i) eligibility requirements consistent with Section [26-18-3] 26B-3-108; 4388 (ii) program benefits; 4389 (iii) the level of coverage for each program benefit; 4390 (iv) cost-sharing requirements for members, which may not: 4391 (A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or 4392 (B) impose deductible, copayment, or coinsurance requirements on a member for well-child, well-baby, and immunizations; 4393 4394 (v) the administration of the program; and 4395 (vi) a requirement that: 4396 (A) members in the program shall participate in the electronic exchange of clinical 4397 health records established in accordance with Section [26-1-37] 26B-X-XXX unless the 4398 member opts out of participation; 4399 (B) prior to enrollment in the electronic exchange of clinical health records the 4400 member shall receive notice of the enrollment in the electronic exchange of clinical health 4401 records and the right to opt out of participation at any time; and 4402 (C) beginning July 1, 2012, when the program sends enrollment or renewal 4403 information to the member and when the member logs onto the program's website, the 4404 member shall receive notice of the right to opt out of the electronic exchange of clinical 4405 health records. 4406 [26-40-105.] 26B-3-903. Eligibility. 4407 (1) A child is eligible to enroll in the program if the child: 4408 4409 (a) is a bona fide Utah resident; (b) is a citizen or legal resident of the United States; 4410 4411 (c) is under 19 years of age; 4412 (d) does not have access to or coverage under other health insurance, including any

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coverage available through a parent or legal guardian's employer;

(e) is ineligible for Medicaid benefits;

4415 (f) resides in a household whose gross family income, as defined by rule, is at or 4416 below 200% of the federal poverty level; and 4417 (g) is not an inmate of a public institution or a patient in an institution for mental 4418 diseases. 4419 (2) A child who qualifies for enrollment in the program under Subsection (1) may not 4420 be denied enrollment due to a diagnosis or pre-existing condition. 4421 (3) (a) The department shall determine eligibility and send notification of the eligibility 4422 decision within 30 days after receiving the application for coverage. 4423 (b) If the department cannot reach a decision because the applicant fails to take a 4424 required action, or because there is an administrative or other emergency beyond the 4425 department's control, the department shall: 4426 (i) document the reason for the delay in the applicant's case record; and 4427 (ii) inform the applicant of the status of the application and time frame for completion. 4428 (4) The department may not close enrollment in the program for a child who is eligible 4429 to enroll in the program under the provisions of Subsection (1). 4430 (5) The program shall: 4431 (a) apply for grants to make technology system improvements necessary to 4432 implement a simplified enrollment and renewal process in accordance with Subsection (5)(b); 4433 and 4434 (b) if funding is available, implement a simplified enrollment and renewal process. 4435 4436 [26-40-106.] 26B-3-904. Program benefits. 4437 (1) Except as provided in Subsection (3), medical and dental program benefits shall 4438 be benchmarked, in accordance with 42 U.S.C. Sec. 1397cc, as follows: (a) medical program benefits, including behavioral health care benefits, shall be 4439 benchmarked effective July 1, 2019, and on July 1 every third year thereafter, to: 4440 4441 (i) be substantially equal to a health benefit plan with the largest insured commercial enrollment offered by a health maintenance organization in the state; and 4442

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1 every third year thereafter in accordance with the Children's Health Insurance Program

(b) dental program benefits shall be benchmarked effective July 1, 2019, and on July

(ii) comply with the Mental Health Parity and Addiction Equity Act, Pub. L. No.

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1447	Reauthorization Act of 2009, to be substantially equal to a dental benefit plan that has the
1448	largest insured, commercial, non-Medicaid enrollment of covered lives that is offered in the
1449	state, except that the utilization review mechanism for orthodontia shall be based on medical
1450	necessity.
1451	(2) On or before July 1 of each year, the department shall publish the benchmark for
1452	dental program benefits established under Subsection (1)(b).
1453	(3) The program benefits:

- 4454 (a) for enrollees who are at or below 100% of the federal poverty level are exempt
 4455 from the benchmark requirements of Subsections (1) and (2); and
- 4456 (b) shall include treatment for autism spectrum disorder as defined in Section 4457 31A-22-642, which:
 - (i) shall include coverage for applied behavioral analysis; and
 - (ii) if the benchmark described in Subsection (1)(a) does not include the coverage described in this Subsection (3)(b), the department shall exclude from the benchmark described in Subsection (1)(a) for any purpose other than providing benefits under the program.

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[26-40-107.] 26B-3-905. Limitation of benefits.

Abortion is not a covered benefit, except as provided in 42 U.S.C. Sec. 1397ee.

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- [26-40-108.] <u>26B-3-906.</u> Funding.
- (1) The program shall be funded by federal matching funds received under, together with state matching funds required by, 42 U.S.C. Sec. 1397ee.
- (2) Program expenditures in the following categories may not exceed 10% in the aggregate of all federal payments pursuant to 42 U.S.C. Sec. 1397ee:
- 4472 (a) other forms of child health assistance for children with gross family incomes below 200% of the federal poverty level;
 - (b) other health services initiatives to improve low-income children's health;
- (c) outreach program expenditures; and
- 4476 (d) administrative costs.

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[26-40-109.] <u>26B-3-907.</u> Evaluation.

4479	The department shall develop performance measures and annually evaluate the
4480	program's performance.
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4482	[26-40-110.] <u>26B-3-908.</u> Managed care Contracting for services.
4483	(1) Program benefits provided to a member under the program, as described in
4484	Section [26-40-106] <u>26B-3-904</u> , shall be delivered by a managed care organization if the
4485	department determines that adequate services are available where the member lives or
4486	resides.
4487	(2) The department may contract with a managed care organization to provide
4488	program benefits. The department shall evaluate a potential contract with a managed care
4489	organization based on:
4490	(a) the managed care organization's:
4491	(i) ability to manage medical expenses, including mental health costs;
4492	(ii) proven ability to handle accident and health insurance;
4493	(iii) efficiency of claim paying procedures;
4494	(iv) proven ability for managed care and quality assurance;
4495	(v) provider contracting and discounts;
4496	(vi) pharmacy benefit management;
4497	(vii) estimated total charges for administering the pool;
4498	(viii) ability to administer the pool in a cost-efficient manner;
4499	(ix) ability to provide adequate providers and services in the state; and
4500	(x) ability to meet quality measures for emergency room use and access to primary
4501	care established by the department under Subsection [26-18-408] 26B-3-904 (4); and
4502	(b) other factors established by the department.
4503	(3) The department may enter into separate managed care organization contracts to
4504	provide dental benefits required by Section [26-40-106] <u>26B-3-904</u> .
4505	(4) The department's contract with a managed care organization for the program's
4506	benefits shall include risk sharing provisions in which the plan shall accept at least 75% of

(5) (a) The department may contract with the Group Insurance Division within the 4509 Utah State Retirement Office to provide services under Subsection (1) if no managed care 4510

the risk for any difference between the department's premium payments per member and

actual medical expenditures.

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4511	organization is willing to contract with the department or the department determines no					
4512	managed care organization meets the criteria established under Subsection (2).					
4513	(b) In accordance with Section 49-20-201, a contract awarded under Subsection					
4514	(5)(a) is not subject to the risk sharing required by Subsection (4).					
4515						
4516	[26-40-115.] <u>26B-3-909.</u> State contractor Employee and dependent health					
4517	benefit plan coverage.					
4518	(1) For purposes of Sections 17B-2a-818.5, 19-1-206, 63A-5b-607, 63C-9-403,					
4519	72-6-107.5, and 79-2-404, "qualified health coverage" means, at the time the contract is					
4520	entered into or renewed:					
4521	(a) a health benefit plan and employer contribution level with a combined actuarial					
4522	value at least actuarially equivalent to the combined actuarial value of:					
4523	(i) the benchmark plan determined by the program under Subsection 26-40-106(1)(a);					
4524	and					
4525	(ii) a contribution level at which the employer pays at least 50% of the premium or					
4526	contribution amounts for the employee and the dependents of the employee who reside or					
4527	work in the state; or					
4528	(b) a federally qualified high deductible health plan that, at a minimum:					
4529	(i) has a deductible that is:					
4530	(A) the lowest deductible permitted for a federally qualified high deductible health					
4531	plan; or					
4532	(B) a deductible that is higher than the lowest deductible permitted for a federally					
4533	qualified high deductible health plan, but includes an employer contribution to a health					
4534	savings account in a dollar amount at least equal to the dollar amount difference between the					
4535	lowest deductible permitted for a federally qualified high deductible plan and the deductible					
4536	for the employer offered federally qualified high deductible plan;					
4537	(ii) has an out-of-pocket maximum that does not exceed three times the amount of					
4538	the annual deductible; and					
4539	(iii) provides that the employer pays 60% of the premium or contribution amounts for					
4540	the employee and the dependents of the employee who work or reside in the state.					

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(2) The department shall:

(a) on or before July 1, 2016:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

4543	(i) determine the commercial equivalent of the benchmark plan described in
4544	Subsection (1)(a); and
4545	(ii) post the commercially equivalent benchmark plan described in Subsection (2)(a)(i)
4546	on the department's website, noting the date posted; and
4547	(b) update the posted commercially equivalent benchmark plan annually and at the
4548	time of any change in the benchmark.
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4550	Part 10. Medical Benefits Recovery.
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4552	[26-19-102.] <u>26B-3-1001.</u> Definitions.
4553	As used in this [chapter] <u>part</u> :
4554	(1) "Annuity" shall have the same meaning as provided in Section 31A-1-301.
4555	(2) "Care facility" means:
4556	(a) a nursing facility;
4557	(b) an intermediate care facility for an individual with an intellectual disability; or
4558	(c) any other medical institution.
4559	(3) "Claim" means:
4560	(a) a request or demand for payment; or
4561	(b) a cause of action for money or damages arising under any law.
4562	(4) "Employee welfare benefit plan" means a medical insurance plan developed by an
4563	employer under 29 U.S.C. [Section] Sec. 1001, et seq., the Employee Retirement Income
4564	Security Act of 1974 as amended.
4565	(5) "Health insurance entity" means:
4566	(a) an insurer;
4567	(b) a person who administers, manages, provides, offers, sells, carries, or underwrites
4568	health insurance, as defined in Section 31A-1-301;
4569	(c) a self-insured plan;
4570	(d) a group health plan, as defined in Subsection 607(1) of the federal Employee
4571	Retirement Income Security Act of 1974;
4572	(e) a service benefit plan;
4573	(f) a managed care organization;
4574	(g) a pharmacy benefit manager;

4575	(h) an employee welfare benefit plan; or
4576	(i) a person who is, by statute, contract, or agreement, legally responsible for
4577	payment of a claim for a health care item or service.
4578	(6) "Inpatient" means an individual who is a patient and a resident of a care facility.
4579	(7) "Insurer" includes:
4580	(a) a group health plan as defined in Subsection 607(1) of the federal Employee
4581	Retirement Income Security Act of 1974;
4582	(b) a health maintenance organization; and
4583	(c) any entity offering a health service benefit plan.
4584	(8) "Medical assistance" means:
4585	(a) all funds expended for the benefit of a recipient under Title 26, Chapter 18,
4586	Medical Assistance Act, or under Titles XVIII and XIX, federal Social Security Act; and
4587	(b) any other services provided for the benefit of a recipient by a prepaid health care
4588	delivery system under contract with the department.
4589	(9) "Office of Recovery Services" means the Office of Recovery Services within the
4590	Department of Human Services.
4591	(10) "Provider" means a person or entity who provides services to a recipient.
4592	(11) "Recipient" means:
4593	(a) an individual who has applied for or received medical assistance from the state;
4594	(b) the guardian, conservator, or other personal representative of an individual under
4595	Subsection (11)(a) if the individual is a minor or an incapacitated person; or
4596	(c) the estate and survivors of an individual under Subsection (11)(a), if the individual
4597	is deceased.
4598	(12) "Recovery estate" means, regarding a deceased recipient:
4599	(a) all real and personal property or other assets included within a decedent's estate
4600	as defined in Section 75-1-201;
4601	(b) the decedent's augmented estate as defined in Section 75-2-203; and
4602	(c) that part of other real or personal property in which the decedent had a legal
4603	interest at the time of death including assets conveyed to a survivor, heir, or assign of the
4604	decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, or
4605	other arrangement.

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(13) "State plan" means the state Medicaid program as enacted in accordance with

- 4607 Title XIX, federal Social Security Act.
- 4608 (14) "TEFRA lien" means a lien, authorized under the Tax Equity and Fiscal
 4609 Responsibility Act of 1982, against the real property of an individual prior to the individual's
 4610 death, as described in 42 U.S.C. Sec. 1396p.
 - (15) "Third party" includes:
 - (a) an individual, institution, corporation, public or private agency, trust, estate, insurance carrier, employee welfare benefit plan, health maintenance organization, health service organization, preferred provider organization, governmental program such as Medicare, CHAMPUS, and workers' compensation, which may be obligated to pay all or part of the medical costs of injury, disease, or disability of a recipient, unless any of these are excluded by department rule; and
 - (b) a spouse or a parent who:
 - (i) may be obligated to pay all or part of the medical costs of a recipient under law or by court or administrative order; or
 - (ii) has been ordered to maintain health, dental, or accident and health insurance to cover medical expenses of a spouse or dependent child by court or administrative order.
 - (16) "Trust" shall have the same meaning as provided in Section 75-1-201.

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- [26-19-103.] <u>26B-3-1002.</u> Program established by department -- Promulgation of rules.
- (1) The department shall establish and maintain a program for the recoupment of medical assistance.
 - (2) The department may promulgate rules to implement the purposes of this chapter.

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- 4631 [26-19-201.] 26B-3-1003. Assignment of rights to benefits.
 - (1) (a) Except as provided in Subsection [26-19-401] 26B-3-1009 (1), to the extent that medical assistance is actually provided to a recipient, all benefits for medical services or payments from a third-party otherwise payable to or on behalf of a recipient are assigned by operation of law to the department if the department provides, or becomes obligated to provide, medical assistance, regardless of who made application for the benefits on behalf of the recipient.
 - (b) The assignment:

- (i) authorizes the department to submit its claim to the third-party and authorizes 4639 4640 payment of benefits directly to the department; and
 - (ii) is effective for all medical assistance.

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- 4642 (2) The department may recover the assigned benefits or payments in accordance 4643 with Section [26-19-401] 26B-3-1009 and as otherwise provided by law.
 - (3) (a) The assignment of benefits includes medical support and third-party payments ordered, decreed, or adjudged by any court of this state or any other state or territory of the United States.
 - (b) The assignment is not in lieu of, and does not supersede or alter any other court order, decree, or judgment.
 - (4) When an assignment takes effect, the recipient is entitled to receive medical assistance, and the benefits paid to the department are a reimbursement to the department.

[26-19-301.] 26B-3-1004. Health insurance entity -- Duties related to state claims for Medicaid payment or recovery.

As a condition of doing business in the state, a health insurance entity shall:

- (1) with respect to an individual who is eligible for, or is provided, medical assistance under the state plan, upon the request of the [Department of Health] department, provide information to determine:
- (a) during what period the individual, or the spouse or dependent of the individual. may be or may have been, covered by the health insurance entity; and
- (b) the nature of the coverage that is or was provided by the health insurance entity described in Subsection (1)(a), including the name, address, and identifying number of the plan;
- (2) accept the state's right of recovery and the assignment to the state of any right of an individual to payment from a party for an item or service for which payment has been made under the state plan;
- (3) respond to any inquiry by the [Department of Health] department regarding a claim for payment for any health care item or service that is submitted no later than three years after the day on which the health care item or service is provided; and
- (4) not deny a claim submitted by the [Department of Health] department solely on the basis of the date of submission of the claim, the type or format of the claim form, or

failure to present proper documentation at the point-of-sale that is the basis for the claim, if: 4671

- (a) the claim is submitted no later than three years after the day on which the item or service is furnished; and
- (b) any action by the [Department of Health] department to enforce the rights of the state with respect to the claim is commenced no later than six years after the day on which the claim is submitted.

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[26-19-302.] 26B-3-1005. Insurance policies not to deny or reduce benefits of individuals eligible for state medical assistance -- Exemptions.

- (1) A policy of accident or sickness insurance may not contain any provision denying or reducing benefits because services are rendered to an insured or dependent who is eligible for or receiving medical assistance from the state.
- (2) An association, corporation, or organization may not deliver, issue for delivery, or renew any subscriber's contract which contains any provisions denying or reducing benefits because services are rendered to a subscriber or dependent who is eligible for or receiving medical assistance from the state.
- (3) An association, corporation, business, or organization authorized to do business in this state and which provides or pays for any health care benefits may not deny or reduce benefits because services are rendered to a beneficiary who is eligible for or receiving medical assistance from the state.
- (4) Notwithstanding Subsection (1), (2), or (3), the Utah State Public Employees' Health Program, administered by the Utah State Retirement Board, is not required to reimburse any agency of state government for custodial care which the agency provides, through its staff or facilities, to members of the Utah State Public Employees' Health Program.

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[26-19-303.] 26B-3-1006. Availability of insurance policy.

If the third party does not pay the department's claim or lien within 30 days from the date the claim or lien is received, the third party shall:

- (1) provide a written explanation if the claim is denied;
- 4701 (2) specifically describe and request any additional information from the department 4702 that is necessary to process the claim; and

4703 (3) provide the department or its agent a copy of any relevant or applicable insurance 4704 or benefit policy.

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[26-19-304.] <u>26B-3-1007.</u> Employee benefit plans.

As allowed pursuant to 29 U.S.C. Section 1144, an employee benefit plan may not include any provision that has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan based on the fact that the individual is eligible for or is provided services under the state plan.

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- [26-19-305.] <u>26B-3-1008.</u> Statute of limitations -- Survival of right of action -- Insurance policy not to limit time allowed for recovery.
- 4715 (1) (a) Subject to Subsection (6), action commenced by the department under this 4716 [chapter] part against a health insurance entity shall be commenced within:
- 4717 (i) subject to Subsection (7), six years after the day on which the department submits 4718 the claim for recovery or payment for the health care item or service upon which the action is 4719 based; or
- 4720 (ii) six months after the date of the last payment for medical assistance, whichever is 4721 later.
 - (b) An action against any other third party, the recipient, or anyone to whom the proceeds are payable shall be commenced within:
 - (i) four years after the date of the injury or onset of the illness; or
- 4725 (ii) six months after the date of the last payment for medical assistance, whichever is 4726 later.
 - (2) The death of the recipient does not abate any right of action established by this chapter.
 - (3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than 24 months from the date the provider furnishes services or goods to the recipient.
- 4733 (b) No insurance policy issued or renewed after April 30, 2007, may contain any provision that limits the time in which the department may submit its claim to recover medical

- assistance benefits to a period of less than that described in Subsection (1)(a).
- 4736 (4) The provisions of this section do not apply to Section [26-19-405 or Part 5, TEFRA 4737 Liens] 26B-3-1013 or Sections 26B-3-1015 through 26B-3-1023.
- 4738 (5) The provisions of this section supercede any other sections regarding the time 4739 limit in which an action shall be commenced, including Section 75-7-509.
 - (6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.
 - (b) Subsection (1)(a) does not revive a cause of action that was time-barred on or before April 30, 2007.
 - (7) An action described in Subsection (1)(a) may not be commenced if the claim for recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after the day on which the health care item or service upon which the claim is based was provided.

[26-19-401.] <u>26B-3-1009.</u> Recovery of medical assistance from third party -- Lien -- Notice -- Action -- Compromise or waiver -- Recipient's right to action protected.

- (1) (a) Except as provided in Subsection (1)(c), if the department provides or becomes obligated to provide medical assistance to a recipient that a third-party is obligated to pay for, the department may recover the medical assistance directly from the third-party.
- (b) (i) A claim under Subsection (1)(a) or Section [26-19-201] <u>26B-3-1003</u> to recover medical assistance provided to a recipient is a lien against any proceeds payable to or on behalf of the recipient by the third-party.
- (ii) The lien described in Subsection (1)(b)(i) has priority over all other claims to the proceeds, except claims for attorney fees and costs authorized under Subsection [26-19-403] <u>26B-3-1011</u> (2)(c)(ii).
 - (c) (i) The department may not recover medical assistance under Subsection (1)(a) if:
- (A) the third-party is obligated to pay the recipient for an injury to the recipient's child that occurred while the child was in the physical custody of the child's foster parent;
- (B) the child's injury is a physical or mental impairment that requires ongoing medical attention, or limits activities of daily living, for at least one year;
- (C) the third-party's payment to the recipient is placed in a trust, annuity, financial account, or other financial instrument for the benefit of the child; and
 - (D) the recipient makes reasonable efforts to mitigate any other medical assistance

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4767	costs	for the	recipient to	the state.

- 4768 (ii) The department is responsible for any repayment to the federal government 4769 related to the medical assistance the department is prohibited from recovering under 4770 Subsection (1)(c)(i).
- 4771 (2) (a) The department shall mail or deliver written notice of the department's claim or 4772 lien to the third-party at the third-party's principal place of business or last-known address.
- 4773 (b) The notice shall include:
- 4774 (i) the recipient's name;

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- 4775 (ii) the approximate date of illness or injury;
- 4776 (iii) a general description of the type of illness or injury; and
- 4777 (iv) if applicable, the general location where the injury is alleged to have occurred.
- 4778 (3) The department may commence an action on the department's claim or lien in the department's name, but the claim or lien is not enforceable as to a third-party unless:
 - (a) the third-party receives written notice of the department's claim or lien before the third-party settles with the recipient; or
 - (b) the department has evidence that the third party had knowledge that the department provided or was obligated to provide medical assistance.
 - (4) The department may:
 - (a) waive a claim or lien against a third party in whole or in part; or
 - (b) compromise, settle, or release a claim or lien.
 - (5) An action commenced under this section does not bar an action by a recipient or a dependent of a recipient for loss or damage not included in the department's action.
 - (6) Except as provided in Subsection (1)(c), the department's claim or lien on proceeds under this section is not affected by the transfer of the proceeds to a trust, annuity, financial account, or other financial instrument.

4793 [26-19-402.] <u>26B-3-1010.</u> Action by department -- Notice to recipient.

- (1) (a) Within 30 days after commencing an action under Subsection [26-19-401] 26B-3-1009 (3), the department shall give the recipient, the recipient's guardian, personal representative, trustee, estate, or survivor, whichever is appropriate, written notice of the action by:
 - (i) personal service or certified mail to the last known address of the person receiving

4799	the notice; or
4800	(ii) if no last-known address is available, by publishing a notice:
4801	(A) once a week for three successive weeks in a newspaper of general circulation in
4802	the county where the recipient resides; and
4803	(B) in accordance with Section 45-1-101 for three weeks.
4804	(b) Proof of service shall be filed in the action.
4805	(c) The recipient may intervene in the department's action at any time before trial.
4806	(2) The notice required by Subsection (1) shall name the court in which the action is
4807	commenced and advise the recipient of:
4808	(a) the right to intervene in the proceeding;
4809	(b) the right to obtain a private attorney; and
4810	(c) the department's right to recover medical assistance directly from the third party.
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4812	[26-19-403.] <u>26B-3-1011.</u> Notice of claim by recipient Department response
4813	Conditions for proceeding Collection agreements.
4814	(1) (a) A recipient may not file a claim, commence an action, or settle, compromise,
4815	release, or waive a claim against a third party for recovery of medical costs for an injury,
4816	disease, or disability for which the department has provided or has become obligated to
4817	provide medical assistance, without the department's written consent as provided in
4818	Subsection (2)(b) or (4).
4819	(b) For purposes of Subsection (1)(a), consent may be obtained if:
4820	(i) a recipient who files a claim, or commences an action against a third party notifies
4821	the department in accordance with Subsection (1)(d) within 10 days of the recipient making
4822	the claim or commencing an action; or
4823	(ii) an attorney, who has been retained by the recipient to file a claim, or commence
4824	an action against a third party, notifies the department in accordance with Subsection (1)(d)
4825	of the recipient's claim:
4826	(A) within 30 days after being retained by the recipient for that purpose; or
4827	(B) within 30 days from the date the attorney either knew or should have known that
4828	the recipient received medical assistance from the department.

personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure,

(c) Service of the notice of claim to the department shall be made by certified mail,

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4831 to the director of the Office of Recovery Services. 4832 (d) The notice of claim shall include the following information: (i) the name of the recipient; 4833 4834 (ii) the recipient's Social Security number: 4835 (iii) the recipient's date of birth; (iv) the name of the recipient's attorney if applicable: 4836 4837 (v) the name or names of individuals or entities against whom the recipient is making 4838 the claim, if known; 4839 (vi) the name of the third party's insurance carrier, if known; 4840 (vii) the date of the incident giving rise to the claim; and (viii) a short statement identifying the nature of the recipient's claim. 4841 4842 (2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1), the department shall acknowledge receipt of the notice of the claim to the recipient or the 4843 4844 recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the 4845 following: 4846 (i) if the department has a claim or lien pursuant to Section 26-19-401 or has become 4847 obligated to provide medical assistance; and 4848 (ii) whether the department is denying or granting written consent in accordance with 4849 Subsection (1)(a). 4850 (b) The department shall provide the recipient's attorney the opportunity to enter into 4851 a collection agreement with the department, with the recipient's consent, unless: 4852 (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to 4853 Subsection (1), filed a written claim with the third party, the third party agreed to make 4854 payment to the department before the date the department received notice of the recipient's 4855 claim, and the agreement is documented in the department's record; or 4856 (ii) there has been a failure by the recipient's attorney to comply with any provision of 4857 this section by: (A) failing to comply with the notice provisions of this section; 4858 (B) failing or refusing to enter into a collection agreement: 4859 4860 (C) failing to comply with the terms of a collection agreement with the department; or

(c) (i) The collection agreement shall be:

(D) failing to disburse funds owed to the state in accordance with this section.

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- 4863 (A) consistent with this section and the attorney's obligation to represent the recipient 4864 and represent the state's claim; and
- 4865 (B) state the terms under which the interests of the department may be represented in an action commenced by the recipient.
 - (ii) If the recipient's attorney enters into a written collection agreement with the department, or includes the department's claim in the recipient's claim or action pursuant to Subsection (4), the department shall pay attorney fees at the rate of 33.3% of the department's total recovery and shall pay a proportionate share of the litigation expenses directly related to the action.
 - (d) The department is not required to enter into a collection agreement with the recipient's attorney for collection of personal injury protection under Subsection 31A-22-302(2).
 - (3) (a) If the department receives notice pursuant to Subsection (1), and notifies the recipient and the recipient's attorney that the department will not enter into a collection agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or action against the third party if the recipient excludes from the claim:
 - (i) any medical expenses paid by the department; or
 - (ii) any medical costs for which the department is obligated to provide medical assistance.
 - (b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall provide written notice to the third party of the exclusion of the department's claim for expenses under Subsection (3)(a)(i) or (ii).
 - (4) If the department receives notice pursuant to Subsection (1), and does not respond within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's attorney:
 - (a) may proceed with the recipient's claim or action against the third party;
 - (b) may include the state's claim in the recipient's claim or action; and
- 4890 (c) may not negotiate, compromise, settle, or waive the department's claim without the department's consent.

[26-19-404.] <u>26B-3-1012.</u> Department's right to intervene -- Department's interests protected -- Remitting funds -- Disbursements -- Liability and penalty for

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- (1) The department has an unconditional right to intervene in an action commenced by a recipient against a third party for the purpose of recovering medical costs for which the department has provided or has become obligated to provide medical assistance.
 - (2) (a) If the recipient proceeds without complying with the provisions of Section 26-19-403, the department is not bound by any decision, judgment, agreement, settlement, or compromise rendered or made on the claim or in the action.
 - (b) The department:
 - (i) may recover in full from the recipient, or any party to which the proceeds were made payable, all medical assistance that the department has provided; and
 - (ii) retains its right to commence an independent action against the third party, subject to Subsection [26-19-401] 26B-3-1009 (3).
 - (3) Any amounts assigned to and recoverable by the department pursuant to Sections [26-19-201 and 26-19-401] 26B-3-1003 and 26B-3-1009 collected directly by the recipient shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than five business days after receipt.
 - (4) (a) Any amounts assigned to and recoverable by the department pursuant to Sections [26-19-201 and 26-19-401] 26B-3-1003 and 26B-3-1009 collected directly by the recipient's attorney shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than 30 days after the funds are placed in the attorney's trust account.
 - (b) The date by which the funds shall be remitted to the department may be modified based on agreement between the department and the recipient's attorney.
- 4918 (c) The department's consent to another date for remittance may not be unreasonably 4919 withheld.
 - (d) If the funds are received by the recipient's attorney, no disbursements shall be made to the recipient or the recipient's attorney until the department's claim has been paid.
 - (5) A recipient or recipient's attorney who knowingly and intentionally fails to comply with this section is liable to the department for:
 - (a) the amount of the department's claim or lien pursuant to Subsection (1);
 - (b) a penalty equal to 10% of the amount of the department's claim; and
 - (c) attorney fees and litigation expenses related to recovering the department's claim.

4927	[26-19-405.] <u>26B-3-1013.</u> Estate and trust recovery.
4928	(1) (a) Except as provided in Subsection (1)(b), upon a recipient's death, the
4929	department may recover from the recipient's recovery estate and any trust, in which the
4930	recipient is the grantor and a beneficiary, medical assistance correctly provided for the
4931	benefit of the recipient when the recipient was 55 years of age or older.
4932	(b) The department may not make an adjustment or a recovery under Subsection
4933	(1)(a):
4934	(i) while the deceased recipient's spouse is still living; or
4935	(ii) if the deceased recipient has a surviving child who is:
4936	(A) under age 21; or
4937	(B) blind or disabled, as defined in the state plan.
4938	(2) (a) The amount of medical assistance correctly provided for the benefit of a
4939	recipient and recoverable under this section is a lien against the deceased recipient's
4940	recovery estate or any trust when the recipient is the grantor and a beneficiary.
4941	(b) The lien holds the same priority as reasonable and necessary medical expenses
4942	of the last illness as provided in Section 75-3-805.
4943	(3) (a) For a lien described in Subsection (2), the department shall provide notice in
4944	accordance with Section 38-12-102.
4945	(b) Before final distribution, the department shall perfect the lien as follows:
4946	(i) for an estate, by presenting the lien to the estate's personal representative in
4947	accordance with Section 75-3-804; and
4948	(ii) for a trust, by presenting the lien to the trustee in accordance with Section
4949	75-7-510.
4950	(c) The department may file an amended lien before the entry of the final order to
4951	close the estate or trust.
4952	(4) Claims against a deceased recipient's inter vivos trust shall be presented in
4953	accordance with Sections 75-7-509 and 75-7-510.
4954	(5) Any trust provision that denies recovery for medical assistance is void at the time
4955	of its making.
4956	(6) Nothing in this section affects the right of the department to recover Medicaid

assistance before a recipient's death under Section [26-19-201 or Section 26-19-406]

26B-3-1003 or 26B-3-1009.

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4959	(7) A lien imposed under this section is of indefinite duration.
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4961	[26-19-406.] <u>26B-3-1014.</u> Recovery from recipient of incorrectly provided
4962	medical assistance.
4963	The department may:
4964	(1) recover medical assistance incorrectly provided, whether due to administrative or
4965	factual error or fraud, from the recipient or the recipient's recovery estate; and
4966	(2) pursuant to a judgment, impose a lien against real property of the recipient.
4967	
4968	[26-19-501.] <u>26B-3-1015.</u> TEFRA liens authorized Grounds for TEFRA liens
4969	Exemptions.
4970	(1) Except as provided in Subsections (2) and (3), the department may impose a
4971	TEFRA lien on the real property of an individual for the amount of medical assistance
4972	provided for, or to, the individual while the individual is an inpatient in a care facility, if:
4973	(a) the individual is an inpatient in a care facility;
4974	(b) the individual is required, as a condition of receiving services under the state plan,
4975	to spend for costs of medical care all but a minimal amount of the individual's income
4976	required for personal needs; and
4977	(c) the department determines that the individual cannot reasonably be expected to:
4978	(i) be discharged from the care facility; and
4979	(ii) return to the individual's home.
4980	(2) The department may not impose a lien on the home of an individual described in
4981	Subsection (1), if any of the following individuals are lawfully residing in the home:
4982	(a) the spouse of the individual;
4983	(b) a child of the individual, if the child is:
4984	(i) under 21 years of age; or
4985	(ii) blind or permanently and totally disabled, as defined in Title 42 U.S.C. Sec.
4986	1382c(a)(3)(F); or
4987	(c) a sibling of the individual, if the sibling:
4988	(i) has an equity interest in the home; and
4989	(ii) resided in the home for at least one year immediately preceding the day on which
4990	the individual was admitted to the care facility.

- 4991 (3) The department may not impose a TEFRA lien on the real property of an 4992 individual, unless:
- 4993 (a) the individual has been an inpatient in a care facility for the 180-day period 4994 immediately preceding the day on which the lien is imposed;
 - (b) the department serves:

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- 4996 (i) a preliminary notice of intent to impose a TEFRA lien relating to the real property, 4997 in accordance with Section [26-19-503] <u>26B-3-1017</u>; and
 - (ii) a final notice of intent to impose a TEFRA lien relating to the real property, in accordance with Section [26-19-504] 26B-3-1018; and
 - (c) (i) the individual does not file a timely request for review of the department's decision under Title 63G, Chapter 4, Administrative Procedures Act; or
 - (ii) the department's decision is upheld upon final review or appeal under Title 63G, Chapter 4, Administrative Procedures Act.

[26-19-502.] <u>26B-3-1016</u> Presumption of permanency.

There is a rebuttable presumption that an individual who is an inpatient in a care facility cannot reasonably be expected to be discharged from a care facility and return to the individual's home, if the individual has been an inpatient in a care facility for a period of at least 180 consecutive days.

[26-19-503.] <u>26B-3-1017.</u> Preliminary notice of intent to impose a TEFRA lien.

- (1) Prior to imposing a TEFRA lien on real property, the department shall serve a preliminary notice of intent to impose a TEFRA lien, on the individual described in Subsection [26-19-501] 26B-3-1015 (1), who owns the property.
 - (2) The preliminary notice of intent shall:
- (a) be served in person, or by certified mail, on the individual described in Subsection [26-19-501] 26B-3-1015 (1), and, if the department is aware that the individual has a legally authorized representative, on the representative;
- 5019 (b) include a statement indicating that, according to the department's records, the 5020 individual:
 - (i) meets the criteria described in Subsections [26-19-501] 26B-3-1015 (1)(a) and (b);
 - (ii) has been an inpatient in a care facility for a period of at least 180 days

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5023	immediately preceding the day on which the department provides the notice to the individual;
5024	and
5025	(iii) is legally presumed to be in a condition where it cannot reasonably be expected
5026	that the individual will be discharged from the care facility and return to the individual's home;
5027	(c) indicate that the department intends to impose a TEFRA lien on real property
5028	belonging to the individual;
5029	(d) describe the real property that the TEFRA lien will apply to;
5030	(e) describe the current amount of, and purpose of, the TEFRA lien;
5031	(f) indicate that the amount of the lien may continue to increase as the individual
5032	continues to receive medical assistance;
5033	(g) indicate that the individual may seek to prevent the TEFRA lien from being
5034	imposed on the real property by providing documentation to the department that:
5035	(i) establishes that the individual does not meet the criteria described in Subsection
5036	[26-19-501] <u>26B-3-1015</u> (1)(a) or (b);
5037	(ii) establishes that the individual has not been an inpatient in a care facility for a
5038	period of at least 180 days;
5039	(iii) rebuts the presumption described in Section [26-19-502] <u>15B-3-1016</u> ; or
5040	(iv) establishes that the real property is exempt from imposition of a TEFRA lien under
5041	Subsection [26-19-501] <u>26B-3-1015</u> (2);
5042	(h) indicate that if the owner fails to provide the documentation described in
5043	Subsection (2)(g) within 30 days after the day on which the preliminary notice of intent is
5044	served, the department will issue a final notice of intent to impose a TEFRA lien on the real
5045	property and will proceed to impose the lien;
5046	(i) identify the type of documentation that the owner may provide to comply with
5047	Subsection (2)(g);
5048	(j) describe the circumstances under which a TEFRA lien is required to be released;
5049	and
5050	(k) describe the circumstances under which the department may seek to recover the
5051	lien.
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5053	[26-19-504.] <u>26B-3-1018.</u> Final notice of intent to impose a TEFRA lien.

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(1) The department may issue a final notice of intent to impose a TEFRA lien on real

5055	property if:
5056	(a) a preliminary notice of intent relating to the property is served in accordance with

- 5058 (b) it is at least 30 days after the day on which the preliminary notice of intent was 5059 served; and
- 5060 (c) the department has not received documentation or other evidence that adequately establishes that a TEFRA lien may not be imposed on the real property.
 - (2) The final notice of intent to impose a TEFRA lien on real property shall:
- 5063 (a) be served in person, or by certified mail, on the individual described in Subsection 5064 [26-19-501] 26B-3-1015 (1), who owns the property, and, if the department is aware that the 5065 individual has a legally authorized representative, on the representative;
 - (b) indicate that the department has complied with the requirements for filing the final notice of intent under Subsection (1);
 - (c) include a statement indicating that, according to the department's records, the individual:
 - (i) meets the criteria described in Subsections [26-19-501] 26B-3-1015 (1)(a) and (b);
- 5071 (ii) has been an inpatient in a care facility for a period of at least 180 days 5072 immediately preceding the day on which the department provides the notice to the individual; 5073 and
 - (iii) is legally presumed to be in a condition where it cannot reasonably be expected that the individual will be discharged from the care facility and return to the individual's home;
 - (d) indicate that the department intends to impose a TEFRA lien on real property belonging to the individual;
 - (e) describe the real property that the TEFRA lien will apply to;
 - (f) describe the current amount of, and purpose of, the TEFRA lien;
- 5080 (g) indicate that the amount of the lien may continue to increase as the individual continues to receive medical assistance;
 - (h) describe the circumstances under which a TEFRA lien is required to be released;
- 5083 (i) describe the circumstances under which the department may seek to recover the 5084 lien;
- 5085 (j) describe the right of the individual to challenge the decision of the department in an adjudicative proceeding; and

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Section [26-19-503] 26B-3-1017;

5087	(k) indicate that failure by the individual to successfully challenge the decision of the
5088	department will result in the TEFRA lien being imposed.
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5090	[26-19-505.] <u>26B-3-1019</u> Review of department decision.
5091	An individual who has been served with a final notice of intent to impose a TEFRA lien
5092	under Section [26-19-504] <u>26B-3-1018</u> may seek agency or judicial review of that decision
5093	under Title 63G, Chapter 4, Administrative Procedures Act.
5094	
5095	[26-19-506.] <u>26B-3-1020.</u> Dissolution and removal of TEFRA lien.
5096	(1) A TEFRA lien shall dissolve and be removed by the department if the individual
5097	described in Subsection [26-19-501] <u>26B-3-1015</u> (1):
5098	(a) (i) is discharged from the care facility; and
5099	(ii) returns to the individual's home; or
5100	(b) provides sufficient documentation to the department that:
5101	(i) rebuts the presumption described in Section [26-19-502] 26B-3-1016; or
5102	(ii) any of the following individuals are lawfully residing in the individual's home:
5103	(A) the spouse of the individual;
5104	(B) a child of the individual, if the child is under 21 years of age or blind or
5105	permanently and totally disabled, as defined in Title 42 U.S.C. Sec. 1382c(a)(3)(F); or
5106	(C) a sibling of the individual, if the sibling has an equity interest in the home and
5107	resided in the home for at least one year immediately preceding the day on which the
5108	individual was admitted to the care facility.
5109	(2) An individual described in Subsection [26-19-501] <u>26B-3-1015</u> (1)(a) may, at any
5110	time after the department has imposed a lien under this part, file a request for the
5111	department to remove the lien.
5112	(3) A request filed under Subsection (2) shall be considered and reviewed pursuant to
5113	Title 63G, Chapter 4, Administrative Procedures Act.
5114	
5115	[26-19-507.] <u>26B-3-1021.</u> Expenditures included in lien Other proceedings.
5116	(1) A TEFRA lien imposed on real property under this part includes all expenses
5117	relating to medical assistance provided or paid for under the state plan from the first day that

the individual is placed in a care facility, regardless of when the lien is imposed or filed on the

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5119	property.
5120	(2) Nothing in this part affects or prevents the department from bringing or pursuing
5121	any other legally authorized action to recover medical assistance or to set aside a fraudulent
5122	or improper conveyance.
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5124	[26-19-508.] <u>26B-3-1022.</u> Contract with another government agency.
5125	If the department contracts with another government agency to recover funds paid for
5126	medical assistance under this [chapter] part, that government agency shall be the sole
5127	agency that determines whether to impose or remove a TEFRA lien under this part.
5128	
5129	[26-19-509.] <u>26B-3-1023.</u> Precedence of the Tax Equity and Fiscal
5130	Responsibility Act of 1982.
5131	If any provision of this part conflicts with the requirements of the Tax Equity and Fiscal
5132	Responsibility Act of 1982 for imposing a lien against the property of an individual prior to the
5133	individual's death, under 42 U.S.C. Sec. 1396p, the provisions of the Tax Equity and Fiscal
5134	Responsibility Act of 1982 take precedence and shall be complied with by the department.
5135	
5136	[26-19-601.] <u>26B-3-1024.</u> Legal recognition of electronic claims records.
5137	Pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act:
5138	(1) a claim submitted to the department for payment may not be denied legal effect,
5139	enforceability, or admissibility as evidence in any court in any civil action because it is in
5140	electronic form; and
5141	(2) a third party shall accept an electronic record of payments by the department for
5142	medical services on behalf of a recipient as evidence in support of the department's claim.
5143	
5144	[26-19-602.] <u>26B-3-1025.</u> Direct payment to the department by third party.
5145	(1) Any third party required to make payment to the department pursuant to this
5146	chapter shall make the payment directly to the department or its designee.
5147	(2) The department may negotiate a payment or payment instrument it receives in
5148	connection with Subsection (1) without the cosignature or other participation of the recipient
5149	or any other party.

5151	[26-19-603.] <u>26B-3-1026.</u> Attorney general or county attorney to represent
5152	department.
5153	The attorney general or a county attorney shall represent the department in any action
5154	commenced under this [chapter] part.
5155	
5156	[26-19-604.] <u>26B-3-1027.</u> Department's right to attorney fees and costs.
5157	In any action brought by the department under this [chapter] part in which it prevails,
5158	the department shall recover along with the principal sum and interest, a reasonable attorney
5159	fee and costs incurred.
5160	
5161	[26-19-605.] <u>26B-3-1028.</u> Application of provisions contrary to federal law
5162	prohibited.
5163	In no event shall any provision contained in this chapter be applied contrary to existing
5164	federal law.
5165	
5166	Part 11. Utah False Claims Act.
5167	
5168	[26-20-2.] <u>26B-3-1101.</u> Definitions.
5169	As used in this [chapter] <u>part</u> :
5170	(1) "Benefit" means the receipt of money, goods, or any other thing of pecuniary
5171	value.
5172	(2) "Claim" means any request or demand for money or property:
5173	(a) made to any:
5174	(i) employee, officer, or agent of the state;
5175	(ii) contractor with the state; or
5176	(iii) grantee or other recipient, whether or not under contract with the state; and
5177	(b) if:
5178	(i) any portion of the money or property requested or demanded was issued from or
5179	provided by the state; or
5180	(ii) the state will reimburse the contractor, grantee, or other recipient for any portion of
5181	the money or property.
5182	(3) "False statement" or "false representation" means a wholly or partially untrue

5183	statement or representation which is:
5184	(a) knowingly made; and
5185	(b) a material fact with respect to the claim.
5186	(4) "Knowing" and "knowingly":
5187	(a) for purposes of criminal prosecutions for violations of this chapter, is one of the
5188	culpable mental states described in Subsection 26-20-9(1); and
5189	(b) for purposes of civil prosecutions for violations of this chapter, is the required
5190	culpable mental state as defined in Subsection 26-20-9.5(1).
5191	(5) "Medical benefit" means a benefit paid or payable to a recipient or a provider
5192	under a program administered by the state under:
5193	(a) Titles V and XIX of the federal Social Security Act;
5194	(b) Title X of the federal Public Health Services Act;
5195	(c) the federal Child Nutrition Act of 1966 as amended by P.L. 94-105; and
5196	(d) any programs for medical assistance of the state.
5197	(6) "Person" means an individual, corporation, unincorporated association,
5198	professional corporation, partnership, or other form of business association.
5199	
5200	[26-20-3.] <u>26B-3-1102.</u> False statement or representation relating to medical
5201	benefits.
5202	(1) A person may not make or cause to be made a false statement or false
5203	representation of a material fact in an application for medical benefits.
5204	(2) A person may not make or cause to be made a false statement or false
5205	representation of a material fact for use in determining rights to a medical benefit.
5206	(3) A person, who having knowledge of the occurrence of an event affecting the
5207	person's initial or continued right to receive a medical benefit or the initial or continued right
5208	of any other person on whose behalf the person has applied for or is receiving a medical
5209	benefit, may not conceal or fail to disclose that event with intent to obtain a medical benefit to
5210	which the person or any other person is not entitled or in an amount greater than that to
5211	which the person or any other person is entitled.
5212	
5213	[26-20-4.] <u>26B-3-1103.</u> Kickbacks or bribes prohibited.

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(1) For purposes of this section, kickback or bribe:

5215	(a) includes rebates, compensation, or any other form of remuneration which is:
5216	(i) direct or indirect;
5217	(ii) overt or covert; or
5218	(iii) in cash or in kind; and
5219	(b) does not include a rebate paid to the state under 42 U.S.C. Sec. 1396r-8 or any
5220	state supplemental rebates.
5221	(2) A person may not solicit, offer, pay, or receive a kickback or bribe in return for or
5222	to induce:
5223	(a) the purchasing, leasing, or ordering of any goods or services for which payment is
5224	or may be made in whole or in part pursuant to a medical benefit program; or
5225	(b) the referral of an individual to another person for the furnishing of any goods or
5226	services for which payment is or may be made in whole or in part pursuant to a medical
5227	benefit program.
5228	
5229	[26-20-5.] <u>26B-3-1104.</u> False statements or false representations relating to
5230	qualification of health institution or facility prohibited Felony.
5231	(1) A person may not knowingly, intentionally, or recklessly make, induce, or seek to
5232	induce, the making of a false statement or false representation of a material fact with respect
5233	to the conditions or operation of an institution or facility in order that the institution or facility
5234	may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing
5235	facility, intermediate care facility, or home health agency.
5236	(2) A person who violates this section is guilty of a second degree felony.
5237	
5238	[26-20-6.] <u>26B-3-1105.</u> Conspiracy to defraud prohibited.
5239	A person may not enter into an agreement, combination, or conspiracy to defraud the
5240	state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious,
5241	or fraudulent claim for a medical benefit.
5242	
5243	[26-20-7.] <u>26B-3-1106.</u> False claims for medical benefits prohibited.
5244	(1) A person may not make or present or cause to be made or presented to an
5245	employee or officer of the state a claim for a medical benefit:

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(a) which is wholly or partially false, fictitious, or fraudulent;

5247	(b) for services which were not rendered or for items or materials which were not
5248	delivered;
5249	(c) which misrepresents the type, quality, or quantity of items or services rendered;
5250	(d) representing charges at a higher rate than those charged by the provider to the
5251	general public;
5252	(e) for items or services which the person or the provider knew were not medically
5253	necessary in accordance with professionally recognized standards;
5254	(f) which has previously been paid;
5255	(g) for services also covered by one or more private sources when the person or
5256	provider knew of the private sources without disclosing those sources on the claim; or
5257	(h) where a provider:
5258	(i) unbundles a product, procedure, or group of procedures usually and customarily
5259	provided or performed as a single billable product or procedure into artificial components or
5260	separate procedures; and
5261	(ii) bills for each component of the product, procedure, or group of procedures:
5262	(A) as if they had been provided or performed independently and at separate times;
5263	and
5264	(B) the aggregate billing for the components exceeds the amount otherwise billable
5265	for the usual and customary single product or procedure.
5266	(2) In addition to the prohibitions in Subsection (1), a person may not:
5267	(a) fail to credit the state for payments received from other sources;
5268	(b) recover or attempt to recover payment in violation of the provider agreement from
5269	(i) a recipient under a medical benefit program; or
5270	(ii) the recipient's family;
5271	(c) falsify or alter with intent to deceive, any report or document required by state or
5272	federal law, rule, or Medicaid provider agreement;
5273	(d) retain any unauthorized payment as a result of acts described by this section; or
5274	(e) aid or abet the commission of any act prohibited by this section.
5275	
5276	[26-20-8.] <u>26B-3-1107.</u> Knowledge of past acts not necessary to establish fact
5277	that false statement or representation knowingly made.
5278	In prosecution under this chapter, it is not necessary to show that the person had

knowledge of similar acts having been performed in the past on the part of persons acting on
his behalf nor to show that the person had actual notice that the acts by the persons acting
on his behalf occurred to establish the fact that a false statement or representation was
knowingly made.

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[26-20-9.] 26B-3-1108. Criminal penalties.

- (1) (a) Except as provided in Subsection (1)(b) the culpable mental state required for a criminal violation of this chapter is knowingly, intentionally, or recklessly as defined in Section 76-2-103.
- 5288 (b) The culpable mental state required for a criminal violation of this chapter for 5289 kickbacks and bribes under Section 26-20-4 is knowingly and intentionally as defined in 5290 Section 76-2-103.
 - (2) The punishment for a criminal violation of any provision of this chapter, except as provided under Section 26-20-5, is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation.
 - (3) Punishment for criminal violation of this chapter, except as provided under Section 26-20-5, is a felony of the second degree, felony of the third degree, class A misdemeanor, or class B misdemeanor based on the dollar amounts as prescribed by Subsection 76-6-412(1) for theft of property and services.

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[26-20-9.5.] <u>26B-3-1109.</u> Civil penalties.

- (1) The culpable mental state required for a civil violation of this chapter is "knowing" or "knowingly" which:
 - (a) means that person, with respect to information:
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
- 5306 (iii) acts in reckless disregard of the truth or falsity of the information; and
- 5307 (b) does not require a specific intent to defraud.
- 5308 (2) Any person who violates this chapter shall, in all cases, in addition to other penalties provided by law, be required to:
 - (a) make full and complete restitution to the state of all damages that the state

5311	sustains because of the person's violation of this chapter;
5312	(b) pay to the state its costs of enforcement of this chapter in that case, including the
5313	cost of investigators, attorneys, and other public employees, as determined by the state; and
5314	(c) pay to the state a civil penalty equal to:
5315	(i) three times the amount of damages that the state sustains because of the person's
5316	violation of this chapter; and
5317	(ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in
5318	violation of this chapter.
5319	(3) Any civil penalties assessed under Subsection (2) shall be awarded by the court
5320	as part of its judgment in both criminal and civil actions.
5321	(4) A criminal action need not be brought against a person in order for that person to
5322	be civilly liable under this section.
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5324	[26-20-10.] <u>26B-3-1110.</u> Revocation of license of assisted living facility
5325	Appointment of receiver.
5326	(1) If the license of an assisted living facility is revoked for violation of this [chapter]
5327	part, the county attorney may file a petition with the district court for the county in which the
5328	facility is located for the appointment of a receiver.
5329	(2) The district court shall issue an order to show cause why a receiver should not be
5330	appointed returnable within five days after the filing of the petition.
5331	(3) (a) If the court finds that the facts warrant the granting of the petition, the court
5332	shall appoint a receiver to take charge of the facility.
5333	(b) The court may determine fair compensation for the receiver.
5334	(4) A receiver appointed pursuant to this section shall have the powers and duties
5335	prescribed by the court.
5336	
5337	[26-20-11.] <u>26B-3-1111.</u> Presumption based on paid state warrant Value of
5338	medical benefits Repayment of benefits.
5339	(1) In any civil or criminal action brought under this [chapter] part, a paid state
5340	warrant, made payable to the order of a party, creates a presumption that the party received

funds from the state.

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(2) In any civil or criminal action brought under this [chapter] part, the value of the

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5343	benefits received shall be the ordinary or usual charge for similar benefits in the private
5344	sector.
5345	(3) In any criminal action under this [chapter] part, the repayment of funds or other
5346	benefits obtained in violation of the provisions of this [chapter] part does not constitute a
5347	defense to, or grounds for dismissal of that action.
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5349	[26-20-12.] <u>26B-3-1112.</u> Violation of other laws.
5350	(1) The provisions of this [chapter] <u>part</u> are:
5351	(a) not exclusive, and the remedies provided for in this [chapter] part are in addition
5352	to any other remedies provided for under:
5353	(i) any other applicable law; or
5354	(ii) common law; and
5355	(b) to be liberally construed and applied to:
5356	(i) effectuate the chapter's remedial and deterrent purposes; and
5357	(ii) serve the public interest.
5358	(2) If any provision of this chapter or the application of this [chapter] part to any
5359	person or circumstance is held unconstitutional:
5360	(a) the remaining provisions of this [chapter] part are not affected; and
5361	(b) the application of this [chapter] part to other persons or circumstances are not
5362	affected.
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5364	[26-20-13.] <u>26B-3-1113.</u> Medicaid fraud enforcement.
5365	(1) This [chapter] part shall be enforced in accordance with this section.
5366	(2) The department is responsible for:
5367	(a) (i) investigating and prosecuting suspected civil violations of this [chapter] part; or
5368	(ii) referring suspected civil violations of this [chapter] part to the attorney general for
5369	investigation and prosecution; and
5370	(b) promptly referring suspected criminal violations of this [chapter] part to the
5371	attorney general for criminal investigation and prosecution.
5372	(3) The attorney general has:
5373	(a) concurrent jurisdiction with the department for investigating and prosecuting

suspected civil violations of this [chapter] part; and

- 5375 (b) exclusive jurisdiction to investigate and prosecute all suspected criminal violations of this [chapter] part.
 - (4) The department and the attorney general share concurrent civil enforcement authority under this [chapter] part and may enter into an interagency agreement regarding the investigation and prosecution of violations of this [chapter] part in accordance with this section, the requirements of Title XIX of the federal Social Security Act, and applicable federal regulations.
 - (5) (a) Any violation of this [chapter] part which comes to the attention of any state government officer or agency shall be reported to the attorney general or the department.
- 5384 (b) All state government officers and agencies shall cooperate with and assist in any prosecution for violation of this [chapter] part.

[26-20-14.] <u>26B-3-1114.</u> Investigations -- Civil investigative demands.

- (1) The attorney general may take investigative action under Subsection (2) if the attorney general has reason to believe that:
- (a) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged violation of this [chapter] part;
- (b) a person is committing, has committed, or is about to commit a violation of this [chapter] part; or
- (c) it is in the public interest to conduct an investigation to ascertain whether or not a person is committing, has committed, or is about to commit a violation of this [chapter] part.
 - (2) In taking investigative action, the attorney general may:
- (a) require the person to file on a prescribed form a statement in writing, under oath or affirmation describing:
- 5399 (i) the facts and circumstances concerning the alleged violation of this [chapter] part; 5400 and
 - (ii) other information considered necessary by the attorney general;
- (b) examine under oath a person in connection with the alleged violation of this [chapter] part; and
- (c) in accordance with Subsections (7) through (18), execute in writing, and serve on the person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material.

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5407	(3) The attorney general may not release or disclose information that is obtained
5408	under Subsection (2)(a) or (b), or any documentary material or other record derived from the
5409	information obtained under Subsection (2)(a) or (b), except:
5410	(a) by court order for good cause shown;
5411	(b) with the consent of the person who provided the information;
5412	(c) to an employee of the attorney general or the department;
5413	(d) to an agency of this state, the United States, or another state;
5414	(e) to a special assistant attorney general representing the state in a civil action;
5415	(f) to a political subdivision of this state; or
5416	(g) to a person authorized by the attorney general to receive the information.
5417	(4) The attorney general may use documentary material derived from information
5418	obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general
5419	determines necessary in the enforcement of this [chapter] part, including presentation
5420	before a court.
5421	(5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to
5422	submit to an examination as required by Subsection (2)(b), the attorney general may file in
5423	district court a complaint for an order to compel the person to within a period stated by court
5424	order:
5425	(i) file the statement required by Subsection (2)(a); or
5426	(ii) submit to the examination required by Subsection (2)(b).
5427	(b) Failure to comply with an order entered under Subsection (5)(a) is punishable as
5428	contempt.
5429	(6) A civil investigative demand shall:
5430	(a) state the rule or statute under which the alleged violation of this [chapter] part is
5431	being investigated;
5432	(b) describe the:
5433	(i) general subject matter of the investigation; and
5434	(ii) class or classes of documentary material to be produced with reasonable
5435	specificity to fairly indicate the documentary material demanded;
5436	(c) designate a date within which the documentary material is to be produced; and
5437	(d) identify an authorized employee of the attorney general to whom the documentary

5438 material is to be made available for inspection and copying.

- (7) A civil investigative demand may require disclosure of any documentary material 5439 5440 that is discoverable under the Utah Rules of Civil Procedure.
 - (8) Service of a civil investigative demand may be made by:

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- 5442 (a) delivering an executed copy of the demand to the person to be served or to a 5443 partner, an officer, or an agent authorized by appointment or by law to receive service of 5444 process on behalf of that person;
 - (b) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or
 - (c) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served:
 - (i) at the person's principal place of business in this state; or
 - (ii) if the person has no place of business in this state, to the person's principal office or place of business.
 - (9) Documentary material demanded in a civil investigative demand shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.
 - (10) The attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained pursuant to a civil investigative demand except:
 - (a) by court order for good cause shown;
 - (b) with the consent of the person who produced the information;
 - (c) to an employee of the attorney general or the department;
 - (d) to an agency of this state, the United States, or another state;
 - (e) to a special assistant attorney general representing the state in a civil action;
 - (f) to a political subdivision of this state; or
- (g) to a person authorized by the attorney general to receive the information. 5464
 - (11) (a) With respect to documentary material obtained pursuant to a civil investigative demand, the attorney general shall prescribe reasonable terms and conditions allowing such documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person.
 - (b) The attorney general may use such documentary material or copies of it as the attorney general determines necessary in the enforcement of this [chapter] part, including

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- 5472 (12) (a) A person may file a complaint, stating good cause, to extend the return date for the demand or to modify or set aside the demand.
- 5474 (b) A complaint under this Subsection (12) shall be filed in district court before the earlier of:
 - [(a)] (i) the return date specified in the demand; or
- 5477 [(b)] (ii) the 20th day after the date the demand is served.
- 5478 (13) Except as provided by court order, a person who has been served with a civil investigative demand shall comply with the terms of the demand.
- 5480 (14) (a) A person who has committed a violation of this [chapter] <u>part</u> in relation to 5481 the Medicaid program in this state or to any other medical benefit program administered by 5482 the state has submitted to the jurisdiction of this state.
 - (b) Personal service of a civil investigative demand under this section may be made on the person described in Subsection (14)(a) outside of this state.
 - (15) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.
 - (16) The attorney general may file a complaint in district court for an order to enforce the civil investigative demand if:
 - (a) a person fails to comply with a civil investigative demand; or
 - (b) copying and reproduction of the documentary material demanded:
 - (i) cannot be satisfactorily accomplished; and
- 5494 (ii) the person refuses to surrender the documentary material.
- 5495 (17) If a complaint is filed under Subsection (16), the court may determine the matter presented and may enter an order to enforce the civil investigative demand.
- 5497 (18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

[26-20-15.] <u>26B-3-1115.</u> Limitation of actions -- Civil acts antedating this section -- Civil burden of proof -- Estoppel -- Joint civil liability -- Venue.

(1) An action under this [chapter] part may not be brought after the later of:

5503	(a) six years after the date on which the violation was committed; or
5504	(b) three years after the date an official of the state charged with responsibility to act
5505	in the circumstances discovers the violation, but in no event more than 10 years after the
5506	date on which the violation was committed.
5507	(2) A civil action brought under this chapter may be brought for acts occurring prior to
5508	the effective date of this section if the limitations period set forth in Subsection (1) has not
5509	lapsed.
5510	(3) In any civil action brought under this [chapter] part the state shall be required to
5511	prove by a preponderance of evidence, all essential elements of the cause of action including
5512	damages.
5513	(4) Notwithstanding any other provision of law, a final judgment rendered in favor of
5514	the state in any criminal proceeding under this [chapter] part, whether upon a verdict after
5515	trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the
5516	essential elements of the offense in any civil action under this [chapter] part which involves
5517	the same transaction.
5518	(5) Civil liability under this [chapter] part shall be joint and several for a violation
5519	committed by two or more persons.
5520	(6) Any action brought by the state under this [chapter] part shall be brought in
5521	district court in Salt Lake County or in any county where the defendant resides or does
5522	business.
5523	
5524	Chapter 8. Health Data, Vital Statistics, and Utah Medical Examiner
5525	
5526	Part 1. Vital Statistics.
5527	
5528	26B-8-101. [Children, youth, and families Reserved] Definitions.
5529	[Reserved] As used in this part:
5530	(1) "Adoption document" means an adoption-related document filed with the office, a
5531	petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted
5532	in support of a supplementary birth certificate.

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(a) is licensed to practice as a certified nurse midwife under Title 58, Chapter 44a,

(2) "Certified nurse midwife" means an individual who:

5535	Nurse Midwife Practice Act; and
5536	(b) has completed an education program regarding the completion of a certificate of
5537	death developed by the department by rule made in accordance with Title 63G, Chapter 3,
5538	Utah Administrative Rulemaking Act.
5539	(3) "Custodial funeral service director" means a funeral service director who:
5540	(a) is employed by a licensed funeral establishment; and
5541	(b) has custody of a dead body.
5542	(4) "Dead body" means a human body or parts of the human body from the condition
5543	of which it reasonably may be concluded that death occurred.
5544	(5) "Decedent" means the same as dead body.
5545	(6) "Dead fetus" means a product of human conception, other than those
5546	circumstances described in Subsection 76-7-301(1):
5547	(a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual
5548	period began to the date of delivery; and
5549	(b) that was not born alive.
5550	(7)"Declarant father" means a male who claims to be the genetic father of a child, and,
5551	along with the biological mother, signs a voluntary declaration of paternity to establish the
5552	child's paternity.
5553	(8) "Dispositioner" means:
5554	(a) a person designated in a written instrument, under Subsection 58-9-602(1), as
5555	having the right and duty to control the disposition of the decedent, if the person voluntarily
5556	acts as the dispositioner; or
5557	(b) the next of kin of the decedent, if:
5558	(i) (A) a person has not been designated as described in Subsection (8)(a); or
5559	(B) the person described in Subsection (8)(a)is unable or unwilling to exercise the
5560	right and duty described in Subsection (8)(a); and
5561	(ii) the next of kin voluntarily acts as the dispositioner.
5562	(9) "Fetal remains" means:
5563	(a) an aborted fetus as that term is defined in Section 26-21-33; or
5564	(b) a miscarried fetus as that term is defined in Section 26-21-34.
5565	(10) "File" means the submission of a completed certificate or other similar document,
5566	record, or report as provided under this part for registration by the state registrar or a local

5567	registrar.
5568	(11) "Funeral service director" means the same as that term is defined in Section
5569	<u>58-9-102.</u>
5570	(12) "Health care facility" means the same as that term is defined in Section 26B-2-
5571	<u>201.</u>
5572	(13) "Health care professional" means a physician, physician assistant, nurse
5573	practitioner, or certified nurse midwife.
5574	(14) "Licensed funeral establishment" means:
5575	(a) if located in Utah, a funeral service establishment, as that term is defined in
5576	Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act;
5577	<u>or</u>
5578	(b) if located in a state, district, or territory of the United States other than Utah, a
5579	funeral service establishment that complies with the licensing laws of the jurisdiction where
5580	the establishment is located.
5581	(15) "Live birth" means the birth of a child who shows evidence of life after the child is
5582	entirely outside of the mother.
5583	(16) "Local registrar" means a person appointed under Subsection 26B-8-102(3)(b).
5584	(17) "Nurse practitioner" means an individual who:
5585	(a) is licensed to practice as an advanced practice registered nurse under Title 58,
5586	Chapter 31b, Nurse Practice Act; and
5587	(b) has completed an education program regarding the completion of a certificate of
5588	death developed by the department by administrative rule made in accordance with Title
5589	63G, Chapter 3, Utah Administrative Rulemaking Act.
5590	(18) "Office" means the Office of Vital Records and Statistics within the department.
5591	(19) "Physician" means a person licensed to practice as a physician or osteopath in
5592	this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah
5593	Osteopathic Medical Practice Act.
5594	(20) "Physician assistant" means an individual who:
5595	(a) is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah
5596	Physician Assistant Act; and
5597	(b) has completed an education program regarding the completion of a certificate of
5598	death developed by the department by administrative rule made in accordance with Title

5599	63G, Chapter 3, Utah Administrative Rulemaking Act.
5600	(21) "Presumed father" means the father of a child conceived or born during a
5601	marriage as defined in Section 30-1-17.2.
5602	(22) "Registration" or "register" means acceptance by the local or state registrar of a
5603	certificate and incorporation of the certificate into the permanent records of the state.
5604	(23) "State registrar" means the state registrar of vital records appointed under
5605	Section 26B-8-102.
5606	(24) "Vital records" means:
5607	(a) registered certificates or reports of birth, death, fetal death, marriage, divorce,
5608	dissolution of marriage, or annulment;
5609	(b) amendments to any of the registered certificates or reports described in
5610	Subsection (24)(a);
5611	(c) an adoption document; and
5612	(d) other similar documents.
5613	(25) "Vital statistics" means the data derived from registered certificates and reports
5614	of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution
5615	of marriage, or annulment.
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5617	[26-2-3. (Effective 01/01/23)] <u>26B-8-102.</u> Department duties and authority.
5618	(1) As used in this section:
5619	(a) "Compact" means the Compact for Interstate Sharing of Putative Father Registry
5620	Information created in Section 78B-6-121.5, effective on May 10, 2016.
5621	(b) "Putative father":
5622	(i) means the same as that term is as defined in Section 78B-6-121.5; and
5623	(ii) includes an unmarried biological father.
5624	(c) "State registrar" means the state registrar of vital records appointed under
5625	Subsection (2)(e).
5626	(d) "Unmarried biological father" means the same as that term is defined in Section
5627	78B-6-103.
5628	(2) The department shall:
5629	(a) provide offices properly equipped for the preservation of vital records made or
5630	received under this [chapter] <u>part</u> ;

- (b) establish a statewide vital records system for the registration, collection, 5631 preservation, amendment, and certification of vital records and other similar documents 5632 required by this chapter and activities related to them, including the tabulation, analysis, and 5633 5634 publication of vital statistics:
 - (c) prescribe forms for certificates, certification, reports, and other documents and records necessary to establish and maintain a statewide system of vital records;
 - (d) prepare an annual compilation, analysis, and publication of statistics derived from vital records; and
 - (e) appoint a state registrar to direct the statewide system of vital records.
 - (3) The department may:

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- (a) divide the state from time to time into registration districts; and
- (b) appoint local registrars for registration districts who under the direction and supervision of the state registrar shall perform all duties required of them by this [chapter] part and department rules.
- (4) The state registrar appointed under Subsection (2)(e) shall, with the input of Utah stakeholders and the Uniform Law Commission, study the following items for the state's implementation of the compact:
- (a) the feasibility of using systems developed by the National Association for Public Health Statistics and Information Systems, including the State and Territorial Exchange of Vital Events (STEVE) system and the Electronic Verification of Vital Events (EVVE) system, or similar systems, to exchange putative father registry information with states that are parties to the compact;
- (b) procedures necessary to share putative father information, located in the confidential registry maintained by the state registrar, upon request from the state registrar of another state that is a party to the compact;
- (c) procedures necessary for the state registrar to access putative father information located in a state that is a party to the compact, and share that information with persons who request a certificate from the state registrar;
- (d) procedures necessary to ensure that the name of the mother of the child who is the subject of a putative father's notice of commencement, filed pursuant to Section 78B-6-121, is kept confidential when a state that is a party to the compact accesses this state's confidential registry through the state registrar; and

(e) procedures necessary to ensure that a putative father's registration with a state
that is a party to the compact is given the same effect as a putative father's notice of
commencement filed pursuant to Section 78B-6-121.

- [26-2-4. (Effective 01/01/2023)] <u>26B-8-103.</u> Content and form of certificates and reports.
- 5669 (1) As used in this section:
 - (a) "Additional information" means information that is beyond the information necessary to comply with federal standards or state law for registering a birth.
 - (b) "Diacritical mark" means a mark on a letter from the ISO basic Latin alphabet used to indicate a special pronunciation.
 - (c) "Diacritical mark" includes accents, tildes, graves, umlauts, and cedillas.
 - (2) Except as provided in Subsection (8), to promote and maintain nationwide uniformity in the vital records system, the forms of certificates, certification, reports, and other documents and records required by this [chapter] part or the rules implementing this [chapter] part shall include as a minimum the items recommended by the federal agency responsible for national vital statistics, subject to approval, additions, and modifications by the department.
 - (3) Certificates, certifications, forms, reports, other documents and records, and the form of communications between persons required by this [chapter] part shall be prepared in the format prescribed by department rule.
 - (4) All vital records shall include the date of filing.
 - (5) Certificates, certifications, forms, reports, other documents and records, and communications between persons required by this [chapter] part may be signed, filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by department rule.
 - (6) (a) An individual may use a diacritical mark in an application for a vital record.
 - (b) The office shall record a diacritical mark on a vital record as indicated on the application for the vital record.
 - (7) The absence of a diacritical mark on a vital record does not render the document invalid or affect any constructive notice imparted by proper recordation of the document.
 - (8) (a) The state:

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5695	(i) may collect the Social Security number of a deceased individual; and
5696	(ii) may not include the Social Security number of an individual on a certificate of
5697	death.
5698	(b) For registering a birth, the department may not require an individual to provide
5699	additional information.
5700	(c) The department may request additional information if the department provides a
5701	written statement that:
5702	(i) discloses that providing the additional information is voluntary;
5703	(ii) discloses how the additional information will be used and the duration of use;
5704	(iii) describes how the department prevents the additional information from being
5705	used in a manner different from the disclosure given under Subsection (6)(c)(ii); and
5706	(iv) includes a notice that the individual is consenting to the department's use of the
5707	additional information by providing the additional information.
5708	(d) (i) Beginning July 1, 2022, an individual may submit a written request to the
5709	department to de-identify the individual's additional information contained in the department's
5710	databases.
5711	(ii) Upon receiving the written request, the department shall de-identify the additional
5712	information.
5713	(e) The department shall de-identify additional information contained in the
5714	department's databases before the additional information is held by the department for
5715	longer than six years.
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5717	[26-2-5.] <u>26B-8-104.</u> Birth certificates Execution and registration
5718	requirements.
5719	(1) As used in this section, "birthing facility" means a general acute hospital or birthing
5720	center as defined in Section [26-21-2] 26B-2-201

- center as defined in Section [26-21-2] <u>268-2-201</u>.
- (2) For each live birth occurring in the state, a certificate shall be filed with the local registrar for the district in which the birth occurred within 10 days following the birth. The certificate shall be registered if it is completed and filed in accordance with this [chapter] part
- (3) (a) For each live birth that occurs in a birthing facility, the administrator of the birthing facility, or his designee, shall obtain and enter the information required under this

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[chapter] part on the certificate, securing the required signatures, and filing the certificate. 5727

- (b) (i) The date, time, place of birth, and required medical information shall be certified by the birthing facility administrator or his designee.
- (ii) The attending physician or nurse midwife may sign the certificate, but if the attending physician or nurse midwife has not signed the certificate within seven days of the date of birth, the birthing facility administrator or his designee shall enter the attending physician's or nurse midwife's name and transmit the certificate to the local registrar.
- (iii) The information on the certificate about the parents shall be provided and certified by the mother or father or, in their incapacity or absence, by a person with knowledge of the facts.
- (4) (a) For live births that occur outside a birthing facility, the birth certificate shall be completed and filed by the physician, physician assistant, nurse, midwife, or other person primarily responsible for providing assistance to the mother at the birth. If there is no such person, either the presumed or declarant father shall complete and file the certificate. In his absence, the mother shall complete and file the certificate, and in the event of her death or disability, the owner or operator of the premises where the birth occurred shall do so.
- (b) The certificate shall be completed as fully as possible and shall include the date, time, and place of birth, the mother's name, and the signature of the person completing the certificate.
- (5) (a) For each live birth to an unmarried mother that occurs in a birthing facility, the administrator or director of that facility, or his designee, shall:
 - (i) provide the birth mother and declarant father, if present, with:
 - (A) a voluntary declaration of paternity form published by the state registrar;
- (B) oral and written notice to the birth mother and declarant father of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration; and
 - (C) the opportunity to sign the declaration;
- (ii) witness the signature of a birth mother or declarant father in accordance with Section 78B-15-302 if the signature occurs at the facility:
- (iii) enter the declarant father's information on the original birth certificate, but only if the mother and declarant father have signed a voluntary declaration of paternity or a court or administrative agency has issued an adjudication of paternity; and

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(iv) file the completed declaration with the original birth certificate.

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- 5760 (b) If there is a presumed father, the voluntary declaration will only be valid if the presumed father also signs the voluntary declaration. 5761
 - (c) The state registrar shall file the information provided on the voluntary declaration of paternity form with the original birth certificate and may provide certified copies of the declaration of paternity as otherwise provided under Title 78B, Chapter 15, Utah Uniform Parentage Act.
 - (6) (a) The state registrar shall publish a form for the voluntary declaration of paternity, a description of the process for filing a voluntary declaration of paternity, and of the rights and responsibilities established or effected by that filing, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act.
 - (b) Information regarding the form and services related to voluntary paternity establishment shall be made available to birthing facilities and to any other entity or individual upon request.
 - (7) The name of a declarant father may only be included on the birth certificate of a child of unmarried parents if:
- 5775 (a) the mother and declarant father have signed a voluntary declaration of paternity; 5776 or
 - (b) a court or administrative agency has issued an adjudication of paternity.
 - (8) Voluntary declarations of paternity, adjudications of paternity by judicial or administrative agencies, and voluntary rescissions of paternity shall be filed with and maintained by the state registrar for the purpose of comparing information with the state case registry maintained by the Office of Recovery Services pursuant to Section 62A-11-104.

[26-2-5.5.] 26B-8-105. Requirement to obtain parents' social security numbers.

- (1) For each live birth that occurs in this state, the administrator of the birthing facility, as defined in Section [26-2-5] 26B-8-104, or other person responsible for completing and filing the birth certificate under Section [26-2-5] 26B-8-104 shall obtain the social security numbers of each parent and provide those numbers to the state registrar.
- (2) Each parent shall furnish his or her social security number to the person authorized to obtain the numbers under Subsection (1) unless a court or administrative agency has determined there is good cause for not furnishing a number under Subsection

5791	(1).
5792	(3) The state registrar shall, as soon as practicable, supply those social security
5793	numbers to the Office of Recovery Services within the Department of Human Services.
5794	(4) The social security numbers obtained under this section may not be recorded on
5795	the child's birth certificate.
5796	(5) The state may not use any social security number obtained under this section for
5797	any reason other than enforcement of child support orders in accordance with the federal
5798	Family Support Act of 1988, [Public Law] Pub. L. No. 100-485.
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5800	[26-2-6. (Effective 01/01/23)] <u>26B-8-106.</u> Foundling certificates.
5801	In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5802	department may make rules:
5803	(1) governing applications to correct alleged errors or omissions on any vital record;
5804	(2) establishing procedures to resolve conflicting birth and foundling certificates; and
5805	(3) allowing for the correction and reissuance of a vital record that was originally
5806	created omitting a diacritical mark.
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5808	[26-2-7. (Effective 01/01/2023)] <u>26B-8-107.</u> Correction of errors or omissions in
5809	vital records Conflicting birth and foundling certificates Rulemaking.
5810	In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5811	department may make rules:
5812	(1) governing applications to correct alleged errors or omissions on any vital record;
5813	(2) establishing procedures to resolve conflicting birth and foundling certificates; and
5814	(3) allowing for the correction and reissuance of a vital record that was originally
5815	created omitting a diacritical mark.
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5817	[26-2-8.] <u>26B-8-108.</u> Birth certificates Delayed registration.
5818	(1) When a certificate of birth of a person born in this state has not been filed within
5819	the time provided in Subsection [26-2-5] 26B-8-104 (2), a certificate of birth may be filed in
5820	accordance with department rules and subject to this section.
5821	(2) (a) The registrar shall mark a certificate of birth as "delayed" and show the date of

registration if the certificate is registered one year or more after the date of birth.

- 5823 (b) The registrar shall abstract a summary statement of the evidence submitted in support of delayed registration onto the certificate.
- 5825 (3) When the minimum evidence required for delayed registration is not submitted or 5826 when the state registrar has reasonable cause to question the validity or adequacy of the 5827 evidence supporting the application, and the deficiencies are not corrected, the state 5828 registrar:
 - (a) may not register the certificate; and

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- (b) shall provide the applicant with a written statement indicating the reasons for denial of registration.
- (4) The state registrar has no duty to take further action regarding an application which is not actively pursued.

[26-2-9.] <u>26B-8-109.</u> Birth certificates -- Petition for issuance of delayed certificate -- Court procedure.

- (1) (a) If registration of a certificate of birth under Section [26-2-8] 26B-8-108 is denied, the person seeking registration may bring an action by a verified petition in the Utah [district] court encompassing where the petitioner resides or in the district encompassing Salt Lake City.
- (b) The petition shall request an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.
 - (2) The petition shall be on a form furnished by the state registrar and shall allege:
- (a) the person for whom registration of a delayed certificate is sought was born in this state and is still living;
- (b) no registered certificate of birth of the person can be found in the state office of vital statistics or the office of any local registrar;
- (c) diligent efforts by the petitioner have failed to obtain the evidence required by department rule; and
- (d) the state registrar has denied the petitioner's request to register a delayed certificate of birth.
- (3) The petition shall be accompanied by a written statement of the state registrar indicating the reasons for denial of registration and all documentary evidence which was submitted in support of registration.

- 5855 (4) The court shall fix a time and place for hearing the petition and shall give the state 5856 registrar 15 days notice of the hearing. The state registrar or his authorized representative 5857 may appear and testify at the hearing.
 - (5) (a) If the court finds the person for whom registration of a certificate of birth is sought under Section 26-2-8 was born in this state, it shall make findings as to the place and date of birth, parentage, and other findings as may be required and shall issue an order, on a form prescribed and furnished by the state registrar, to establish a court-ordered delayed certificate of birth.
 - (b) The order <u>described in Subsection (5)(a)</u> shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.
 - [(b)] (c) The clerk of the court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which the order was entered.
 - (d) The order <u>described in Subsection (5)(a)</u> shall be registered by the state registrar and constitutes the certificate of birth.

[26-2-10.] <u>26B-8-110.</u> Supplementary certificate of birth.

- (1) An individual born in this state may request the state registrar to register a supplementary birth certificate for the individual if:
- (a) the individual is legally recognized as a child of the individual's natural parents when the individual's natural parents are subsequently married;
- (b) the individual's parentage has been determined by a state court of the United States or a Canadian provincial court with jurisdiction; or
- (c) the individual has been legally adopted, as a child or as an adult, under the law of this state, any other state, or any province of Canada.
- 5880 (2) The application for registration of a supplementary birth certificate may be made 5881 by:
- 5882 (a) the individual requesting registration under Subsection (1) if the individual is of legal age;
 - (b) a legal representative; or
- 5885 (c) any agency authorized to receive children for placement or adoption under the laws of this or any other state.

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- 5887 (3) (a) The state registrar shall require that an applicant submit identification and 5888 proof according to department rules.
 - (b) In the case of an adopted individual, that proof may be established by order of the court in which the adoption proceedings were held.
 - (4) (a) After the supplementary birth certificate is registered, any information disclosed from the record shall be from the supplementary birth certificate.
 - (b) Access to the original birth certificate and to the evidence submitted in support of the supplementary birth certificate are not open to inspection except upon the order of a Utah [district] court or as described in Section 78B-6-141 or Section 78B-6-144.

[26-2-11.] 26B-8-111. Name or sex change -- Registration of court order and amendment of birth certificate.

- (1) When a person born in this state has a name change or sex change approved by an order of a Utah [district] court or a court of competent jurisdiction of another state or a province of Canada, a certified copy of the order may be filed with the state registrar with an application form provided by the registrar.
- (2) (a) Upon receipt of the application, a certified copy of the order, and payment of the required fee, the state registrar shall review the application, and if complete, register it and note the fact of the amendment on the otherwise unaltered original certificate.
- (b) The amendment shall be registered with and become a part of the original certificate and a certified copy shall be issued to the applicant without additional cost.

[26-2-12.5.] 26B-8-112. Certified copies of birth certificates -- Fees credited to **Children's Account.**

- (1) In addition to the fees provided for in Section 26B-1-209, the department and local registrars authorized to issue certified copies shall charge an additional \$3 fee for each certified copy of a birth certificate, including certified copies of supplementary and amended birth certificates, under Sections [26-2-8 through 26-2-11] 26B-8-108 through 26B-8-111.
- 5915 (2) [This] The additional fee described in Subsection (1) may be charged only for 5916 the first copy requested at any one time.
- 5917 (2) The fee shall be transmitted monthly to the state treasurer and credited to 5918 the Children's Account [established] created in Section 80-2-501.

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5919	[26-2-12.6.] <u>26B-8-113.</u> Fee waived for certified copy of birth certificate.
5920	(1) Notwithstanding [Sections] Sections 26B-1-209 and [Section 26-2-12.5]
5921	26B-6-112, the department shall waive a fee that would otherwise be charged for a certified
5922	copy of a birth certificate, if the individual whose birth is confirmed by the birth certificate is:
5923	(a) the individual requesting the certified copy of the birth certificate; and
5924	(b) (i) homeless, as defined in Section [26-18-411] _;
5925	(ii) a person who is homeless, as defined in Section 35A-5-302;
5926	(iii) an individual whose primary nighttime residence is a location that is not designed
5927	for or ordinarily used as a sleeping accommodation for an individual;
5928	(iv) a homeless service provider as verified by the Department of Workforce Services
5929	or
5930	(v) a homeless child or youth, as defined in 42 U.S.C. Sec. 11434a.
5931	(2) To satisfy the requirement in Subsection (1)(b), the department shall accept
5932	written verification that the individual is homeless or a person, child, or youth who is
5933	homeless from:
5934	(a) a homeless shelter;
5935	(b) a permanent housing, permanent, supportive, or transitional facility, as defined in
5936	Section 35A-5-302;
5937	(c) the Department of Workforce Services;
5938	(d) a homeless service provider as verified by the Department of Workforce Services
5939	or
5940	(e) a local educational agency liaison for homeless children and youth designated
5941	under 42 U.S.C. Sec. 11432(g)(1)(J)(ii).
5942	[(3) Before October 1, 2022, the office shall submit a report to the Health and Human
5943	Services Interim Committee providing several options on how the office can eliminate or
5944	significantly reduce birth certificate fees.]
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5946	[26-2-13.] <u>26B-8-114.</u> Certificate of death Execution and registration
5947	requirements Information provided to lieutenant governor.
5948	(1) (a) A certificate of death for each death that occurs in this state shall be filed with
5949	the local registrar of the district in which the death occurs, or as otherwise directed by the
5050	state registrar, within five days after death and prior to the decedent's interment, any other

5951	disposal, or removal from the registration district where the death occurred.
5952	(b) A certificate of death shall be registered if the certificate of death is completed and
5953	filed in accordance with this [chapter] part.
5954	(2) (a) If the place of death is unknown but the dead body is found in this state:
5955	(i) the certificate of death shall be completed and filed in accordance with this section;
5956	and
5957	(ii) the place where the dead body is found shall be shown as the place of death.
5958	(b) If the date of death is unknown, the date shall be determined by approximation.
5959	(3) (a) When death occurs in a moving conveyance in the United States and the
5960	decedent is first removed from the conveyance in this state:
5961	(i) the certificate of death shall be filed with:
5962	(A) the local registrar of the district where the decedent is removed; or
5963	(B) a person designated by the state registrar; and
5964	(ii) the place where the decedent is removed shall be considered the place of death.
5965	(b) When a death occurs on a moving conveyance outside the United States and the
5966	decedent is first removed from the conveyance in this state:
5967	(i) the certificate of death shall be filed with:
5968	(A) the local registrar of the district where the decedent is removed; or
5969	(B) a person designated by the state registrar; and
5970	(ii) the certificate of death shall show the actual place of death to the extent it can be
5971	determined.
5972	(4) (a) Subject to Subsections (4)(d) and (10), a custodial funeral service director or, if
5973	a funeral service director is not retained, a dispositioner shall sign the certificate of death.
5974	(b) The custodial funeral service director, an agent of the custodial funeral service
5975	director, or, if a funeral service director is not retained, a dispositioner shall:
5976	(i) file the certificate of death prior to any disposition of a dead body or fetus; and
5977	(ii) obtain the decedent's personal data from the next of kin or the best qualified
5978	person or source available, including the decedent's social security number, if known.
5979	(c) The certificate of death may not include the decedent's social security number.
5980	(d) A dispositioner may not sign a certificate of death, unless the signature is
5981	witnessed by the state registrar or a local registrar.

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(5) (a) Except as provided in Section [26-2-14] 26B-8-103, fetal death certificates,

the medical section of the certificate of death shall be completed, signed, and returned to the funeral service director, or, if a funeral service director is not retained, a dispositioner, within 72 hours after death by the health care professional who was in charge of the decedent's care for the illness or condition which resulted in death, except when inquiry is required by [Title 26, Chapter 4, Utah Medical Examiner Act] Chapter X, Part X, Utah Medical Examiner.

- (b) In the absence of the health care professional or with the health care professional's approval, the certificate of death may be completed and signed by an associate physician, the chief medical officer of the institution in which death occurred, or a physician who performed an autopsy upon the decedent, if:
 - (i) the person has access to the medical history of the case;
 - (ii) the person views the decedent at or after death; and
- (iii) the death is not due to causes required to be investigated by the medical examiner.
- (6) When death occurs more than 365 days after the day on which the decedent was last treated by a health care professional, the case shall be referred to the medical examiner for investigation to determine and certify the cause, date, and place of death.
- (7) When inquiry is required by [Title 26, Chapter 4, Utah Medical Examiner Act]

 Chapter X, Part X, Utah Medical Examiner, the medical examiner shall make an investigation and complete and sign the medical section of the certificate of death within 72 hours after taking charge of the case.
 - (8) If the cause of death cannot be determined within 72 hours after death:
- (a) the medical section of the certificate of death shall be completed as provided by department rule;
- (b) the attending health care professional or medical examiner shall give the funeral service director, or, if a funeral service director is not retained, a dispositioner, notice of the reason for the delay; and
- (c) final disposition of the decedent may not be made until authorized by the attending health care professional or medical examiner.
- (9) (a) When a death is presumed to have occurred within this state but the dead body cannot be located, a certificate of death may be prepared by the state registrar upon receipt of an order of a Utah [district] court.
 - (b) The order described in Subsection (9)(a) shall include a finding of fact stating the

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6015	name of the decedent, the date of death, and the place of death.
6016	(c) A certificate of death prepared under Subsection (9)(a) shall:
6017	(i) show the date of registration; and
6018	(ii) identify the court and the date of the order.
6019	(10) It is unlawful for a dispositioner to charge for or accept any remuneration for:
6020	(a) signing a certificate of death; or
6021	(b) performing any other duty of a dispositioner, as described in this section.
6022	(11) The state registrar shall, within five business days after the day on which the
6023	state registrar or local registrar registers a certificate of death for a Utah resident, inform the
6024	lieutenant governor of:
6025	(a) the decedent's name, last known residential address, date of birth, and date of
6026	death; and
6027	(b) any other information requested by the lieutenant governor to assist the county
6028	clerk in identifying the decedent for the purpose of removing the decedent from the official
6029	register of voters.
6030	(12) The lieutenant governor shall, within one business day after the day on which the
6031	lieutenant governor receives the information described in Subsection (11), provide the
6032	information to the county clerks.
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6034	[26-2-14.] <u>26B-8-115.</u> Fetal death certificate Filing and registration
6035	requirements.
6036	(1) A fetal death certificate shall be filed for each fetal death which occurs in this state.
6037	The certificate shall be filed within five days after delivery with the local registrar or as
6038	otherwise directed by the state registrar. The certificate shall be registered if it is completed
6039	and filed in accordance with this [chapter] part.
6040	(2) When a dead fetus is delivered in an institution, the institution administrator or his
6041	designated representative shall prepare and file the fetal death certificate. The attending
6042	physician shall state in the certificate the cause of death and sign the certificate.
6043	(3) When a dead fetus is delivered outside an institution, the physician in attendance

(4) When a fetal death occurs without medical attendance at or immediately after the

at or immediately after delivery shall complete, sign, and file the fetal death certificate.

delivery or when inquiry is required by [Title 26, Chapter 4, Utah Medical Examiner Act]

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- Chapter X, Part X, Utah Medical Examiner, the medical examiner shall investigate the cause 6047 6048 of death and prepare and file the certificate of fetal death within five days after taking charge of the case. 6049
 - (5) When a fetal death occurs in a moving conveyance and the dead fetus is first removed from the conveyance in this state or when a dead fetus is found in this state and the place of death is unknown, the death shall be registered in this state. The place where the dead fetus was first removed from the conveyance or found shall be considered the place of death.
- 6055 (6) Final disposition of the dead fetus may not be made until the fetal death certificate 6056 has been registered.

[26-2-14.1.] 26B-8-116. Certificate of birth resulting in stillbirth.

- (1) [For purposes of this section and Section 26-2-14.2,] As used in this section "stillbirth" and "stillborn child" [shall have the same meaning] mean the same as "dead fetus" as defined in Section [26-2-2] 26B-8-101.
- (2) (a) In addition to the requirements of Section [26-2-14] 26B-8-115, the state registrar shall establish a certificate of birth resulting in stillbirth on a form approved by the state registrar for each stillbirth occurring in this state.
 - (b) This certificate shall be offered to the parent or parents of a stillborn child.
- (3) The certificate of birth resulting in stillbirth shall meet all of the format and filing requirements of Sections 26-2-4 and 26-2-5, relating to a live birth.
- (4) The person who prepares a certificate pursuant to this section shall leave blank any references to the stillborn child's name if the stillborn child's parent or parents do not wish to provide a name for the stillborn child.
- (5) Notwithstanding Subsections (2) and (3), the certificate of birth resulting in stillbirth shall be filed with the designated registrar within 10 days following the delivery and prior to cremation or removal of the fetus from the registration district.

[26-2-14.2.] 26B-8-117. Delayed registration of birth resulting in stillbirth.

When a birth resulting in stillbirth occurring in this state has not been registered within one year after the date of delivery, a certificate marked "delayed" may be filed and registered in accordance with department rule relating to evidentiary and other requirements sufficient

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6079	to substantiate the alleged facts of birth resulting in stillbirth.
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6081	[26-2-14.3.] <u>26B-8-118,</u> Certificate of early term stillbirth.
6082	(1) As used in this section, "early term stillborn child" means a product of human
6083	conception, other than in the circumstances described in Subsection 76-7-301(1), that:
6084	(a) is of at least 16 weeks' gestation but less than 20 weeks' gestation, calculated
6085	from the day on which the mother's last normal menstrual period began to the day of
6086	delivery; and
6087	(b) is not born alive.
6088	(2) The state registrar shall issue a certificate of early term stillbirth to a parent of an
6089	early term stillborn child if:
6090	(a) the parent requests, on a form created by the state registrar, that the state
6091	registrar register and issue a certificate of early term stillbirth for the early term stillborn child;
6092	and
6093	(b) the parent files with the state registrar:
6094	(i) (A) a signed statement from a physician confirming the delivery of the early term
6095	stillborn child; or
6096	(B) an accurate copy of the parent's medical records related to the early term stillborn
6097	child; and
6098	(ii) any other record the state registrar determines, by rule made in accordance with
6099	Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is necessary for accurate
6100	recordkeeping.
6101	(3) The certificate of early term stillbirth described in Subsection (2) shall meet all of
6102	the format and filing requirements of Section [26-2-4] <u>26B-8-103</u> .
6103	(4) A person who prepares a certificate of early term stillbirth under this section shall
6104	leave blank any references to an early term stillborn child's name if the early term stillborn
6105	child's parent does not wish to provide a name for the early term stillborn child.
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6107	[26-2-15.] <u>26B-8-119.</u> Petition for establishment of unregistered birth or death
6108	Court procedure.
6109	(1) A person holding a direct, tangible, and legitimate interest as described in

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Subsection [26-2-22] 26B-8-126 (3)(a) or (b) may petition for a court order establishing the

- fact, time, and place of a birth or death that is not registered or for which a certified copy of the registered birth or death certificate is not obtainable. The person shall verify the petition and file the petition in the Utah [district] court for the county where:
- (a) the birth or death is alleged to have occurred;

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- (b) the person resides whose birth is to be established; or
- (c) the decedent named in the petition resided at the date of death.
- 6117 (2) In order for the court to have jurisdiction, the petition shall:
 - (a) allege the date, time, and place of the birth or death; and
- (b) state either that no certificate of birth or death has been registered or that a copy of the registered certificate cannot be obtained.
- 6121 (3) The court shall set a hearing for five to 10 days after the day on which the petition 6122 is filed.
 - (4) (a) If the time and place of birth or death are in question, the court shall hear available evidence and determine the time and place of the birth or death.
 - (b) If the time and place of birth or death are not in question, the court shall determine the time and place of birth or death to be those alleged in the petition.
 - (5) A court order under this section shall be made on a form prescribed and furnished by the department and is effective upon the filing of a certified copy of the order with the state registrar.
 - (6) (a) For purposes of this section, the birth certificate of an adopted alien child, as defined in Section 78B-6-108, is considered to be unobtainable if the child was born in a country that is not recognized by department rule as having an established vital records registration system.
 - (b) If the adopted child was born in a country recognized by department rule, but a person described in Subsection (1) is unable to obtain a certified copy of the birth certificate, the state registrar shall authorize the preparation of a birth certificate if the state registrar receives a written statement signed by the registrar of the child's birth country stating a certified copy of the birth certificate is not available.

[26-2-16.] 26B-8-120. Certificate of death -- Duties of a custodial funeral service director, an agent of a funeral service director, or a dispositioner -- Medical certification -- Records of funeral service director or dispositioner -- Information filed

with local registrar -- Unlawful signing of certificate of death.

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- (1) The custodial funeral service director or, if a funeral service director is not
 retained, a dispositioner shall sign the certificate of death prior to any disposition of a dead
 body or dead fetus.
- 6147 (2) The custodial funeral service director, an agent of the custodial funeral service director, or, if a funeral service director is not retained, a dispositioner shall:
 - (a) obtain personal and statistical information regarding the decedent from the available persons best qualified to provide the information;
 - (b) present the certificate of death to the attending health care professional, if any, or to the medical examiner who shall certify the cause of death and other information required on the certificate of death;
- 6154 (c) provide the address of the custodial funeral service director or, if a funeral service director is not retained, a dispositioner;
 - (d) certify the date and place of burial; and
 - (e) file the certificate of death with the state or local registrar.
 - (3) A funeral service director, dispositioner, embalmer, or other person who removes a dead body or dead fetus from the place of death or transports or is in charge of final disposal of a dead body or dead fetus, shall keep a record identifying the dead body or dead fetus, and containing information pertaining to receipt, removal, and delivery of the dead body or dead fetus as prescribed by department rule.
 - (4) (a) Not later than the tenth day of each month, every licensed funeral service establishment shall send to the local registrar and the department a list of the information required in Subsection (3) for each casket furnished and for funerals performed when no casket was furnished, during the preceding month.
 - (b) The list described in Subsection (4)(a) shall be in the form prescribed by the state registrar.
 - (5) Any person who intentionally signs the portion of a certificate of death that is required to be signed by a funeral service director or a dispositioner under Subsection (1) is guilty of a class B misdemeanor, unless the person:
 - (a) (i) is a funeral service director; and
 - (ii) is employed by a licensed funeral establishment; or
 - (b) is a dispositioner, if a funeral service director is not retained.

- (6) The state registrar shall post information on the state registrar's website, providing
 instructions to a dispositioner for complying with the requirements of law relating to the
 dispositioner's responsibilities for:
 - (a) completing and filing a certificate of death; and

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- (b) possessing, transporting, and disposing of a dead body or dead fetus.
- 6180 (7) The provisions of this [chapter] part shall be construed to avoid interference, to
 6181 the fullest extent possible, with the ceremonies, customs, rites, or beliefs of the decedent and
 6182 the decedent's next of kin for disposing of a dead body or dead fetus.

[26-2-17.] 26B-8-121. Certificate of death -- Registration prerequisite to interment -- Burial-transit permits -- Procedure where body donated under anatomical gift law -- Permit for disinterment.

- (1) (a) A dead body or dead fetus may not be interred or otherwise disposed of or removed from the registration district in which death or fetal death occurred or the remains are found until a certificate of death is registered.
- (b) Subsection (1)(a) does not apply to fetal remains for a fetus that is less than 20 weeks in gestational age.
- (2) (a) For deaths or fetal deaths which occur in this state, no burial-transit permit is required for final disposition of the remains if:
 - (i) disposition occurs in the state and is performed by a funeral service director; or
 - (ii) the disposition takes place with authorization of the next of kin and in:
- (A) a general acute hospital as [that term is] defined in Section [26-21-2] 26B-2-201, that is licensed by the department; or
- (B) in a pathology laboratory operated under contract with a general acute hospital licensed by the department.
- (b) For an abortion or miscarriage that occurs at a health care facility, no burial-transit permit is required for final disposition of the fetal remains if:
 - (i) disposition occurs in the state and is performed by a funeral service director; or
 - (ii) the disposition takes place:
- 6204 (A) with authorization of the parent of a miscarried fetus or the pregnant woman for an aborted fetus; and
 - (B) in a general acute hospital as [that term is] defined in Section [26-21-2]

- 26B-2-201, or a pathology laboratory operated under contract with a general acute hospital. 6207
- 6208 (3) (a) A burial-transit permit shall be issued by the local registrar of the district where the certificate of death or fetal death is registered: 6209
- 6210 (i) for a dead body or a dead fetus to be transported out of the state for final 6211 disposition; or
- (ii) when disposition of the dead body or dead fetus is made by a person other than a 6212 6213 funeral service director.
- 6214 (b) For fetal remains that are less than 20 weeks in gestational age, a burial-transit 6215 permit shall be issued by the local registrar of the district where the health care facility that is 6216 in possession of the fetal remains is located:
 - (i) for the fetal remains to be transported out of the state for final disposition; or
 - (ii) when disposition of the fetal remains is made by a person other than a funeral service director.
 - (c) A local registrar issuing a burial-transit permit issued under Subsection (3)(b):
 - (i) may not require an individual to designate a name for the fetal remains; and
 - (ii) may leave the space for a name on the burial-transit permit blank; and
- 6223 (d) shall redact from any public records maintained under this [chapter] part any 6224 information:
 - (i) that is submitted under Subsection (3)(c); and
 - (ii) that may be used to identify the parent or pregnant woman.
 - (4) A burial-transit permit issued under the law of another state which accompanies a dead body, dead fetus, or fetal remains brought into this state is authority for final disposition of the dead body, dead fetus, or fetal remains in this state.
 - (5) When a dead body or dead fetus or any part of the dead body or dead fetus has been donated under [the] Chapter X, Part X, Revised Uniform Anatomical Gift Act, or similar laws of another state and the preservation of the gift requires the immediate transportation of the dead body, dead fetus, or any part of the body or fetus outside of the registration district in which death occurs or the remains are found, or into this state from another state, the dead body or dead fetus or any part of the body or fetus may be transported and the burial-transit permit required by this section obtained within a reasonable time after transportation.
 - (6) A permit for disinterment and reinterment is required prior to disinterment of a

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dead body	, dead fetus,	or fetal	remains,	except as	otherwise	provided by	statute or
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- [26-2-18.] 26B-8-122. Interments -- Duties of sexton or person in charge --Record of interments -- Information filed with local registrar.
- 6244 (1) (a) A sexton or person in charge of any premises in which interments are made may not inter or permit the interment of any dead body, dead fetus, or fetal remains unless 6245 6246 the interment is made by a funeral service director or by a person holding a burial-transit 6247 permit.
 - (b) The right and duty to control the disposition of a deceased person shall be governed by Sections 58-9-601 through 58-9-604.
 - (2) (a) The sexton or the person in charge of any premises where interments are made shall keep a record of all interments made in the premises under their charge, stating the name of the decedent, place of death, date of burial, and name and address of the funeral service director or other person making the interment.
 - (b) The record described in this Subsection (2) shall be open to public inspection.
 - (c) A city or county clerk may, at the clerk's option, maintain the interment records described in this Subsection (2) on behalf of the sexton or person in charge of any premises in which interments are made.
 - (3) (a) Not later than the tenth day of each month, the sexton, person in charge of the premises, or city or county clerk who maintains the interment records shall send to the local registrar and the department a list of all interments made in the premises during the preceding month.
 - (b) The list described in Subsection (3)(a) shall be in the form prescribed by the state registrar.

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[26-2-19.] 26B-8-123. Rules of department for transmittal of certificates and keeping of records by local registrar.

Each local registrar shall transmit all records registered by him to the department in accordance with department rules. The manner of keeping local copies of vital records and the uses of them shall be prescribed by department rules.

[26-2-21.] 26B-8-124. Local registrars authorized to issue certified copies of 6271 6272 records. 6273 The state registrar may authorize local registrars to issue certified copies of vital 6274 records. 6275 6276 [26-2-22.] 26B-8-125. Inspection of vital records. 6277 (1) As used in this section: 6278 (a) "Designated legal representative" means an attorney, physician, funeral service director, genealogist, or other agent of the subject, or an immediate family member of the 6279 6280 subject, who has been delegated the authority to access vital records. 6281 (b) "Drug use intervention or suicide prevention effort" means a program that studies or promotes the prevention of drug overdose deaths or suicides in the state. 6282 (c) "Immediate family member" means a spouse, child, parent, sibling, grandparent, 6283 or grandchild. 6284 6285 (2) (a) The vital records shall be open to inspection, but only in compliance with the provisions of this [chapter] part, department rules, and Sections 78B-6-141 and 78B-6-144. 6286 6287 (b) It is unlawful for any state or local officer or employee to disclose data contained 6288 in vital records contrary to this [chapter] part, department rule, Section 78B-6-141, or 6289 Section 78B-6-144. 6290 (c) (i) An adoption document is open to inspection as provided in Section 78B-6-141 6291 or Section 78B-6-144. 6292 (ii) A birth parent may not access an adoption document under Subsection 6293 78B-6-141(3). (d) A custodian of vital records may permit inspection of a vital record or issue a 6294 6295 certified copy of a record or a part of a record when the custodian is satisfied that the 6296 applicant has demonstrated a direct, tangible, and legitimate interest. 6297 (3) Except as provided in Subsection (4), a direct, tangible, and legitimate interest in a 6298 vital record is present only if: 6299 (a) the request is from:

- 6300 (i) the subject;

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- (ii) an immediate family member of the subject;
- (iii) the guardian of the subject;

6303 (iv) a designated legal representative of the subject; or

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- 6304 (v) a person, including a child-placing agency as defined in Section 78B-6-103, with 6305 whom a child has been placed pending finalization of an adoption of the child;
 - (b) the request involves a personal or property right of the subject of the record;
- 6307 (c) the request is for official purposes of a public health authority or a state, local, or 6308 federal governmental agency;
 - (d) the request is for a drug use intervention or suicide prevention effort or a statistical or medical research program and prior consent has been obtained from the state registrar; or
 - (e) the request is a certified copy of an order of a court of record specifying the record to be examined or copied.
 - (4) (a) Except as provided in Title 78B, Chapter 6, Part 1, Utah Adoption Act, a parent, or an immediate family member of a parent, who does not have legal or physical custody of or visitation or parent-time rights for a child because of the termination of parental rights under Title 80, Chapter 4, Termination and Restoration of Parental Rights, or by virtue of consenting to or relinquishing a child for adoption pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act, may not be considered as having a direct, tangible, and legitimate interest under this section.
 - (b) Except as provided in Subsection (2)(d), a commercial firm or agency requesting names, addresses, or similar information may not be considered as having a direct, tangible, and legitimate interest under this section.
 - (5) Upon payment of a fee established in accordance with Section 63J-1-504, the office shall make the following records available to the public:
 - (a) except as provided in Subsection [26-2-10] <u>26B-8-110</u> (4)(b), a birth record, excluding confidential information collected for medical and health use, if 100 years or more have passed since the date of birth;
 - (b) a death record if 50 years or more have passed since the date of death; and
 - (c) a vital record not subject to Subsection (5)(a) or (b) if 75 years or more have passed since the date of the event upon which the record is based.
 - (6) Upon payment of a fee established in accordance with Section 63J-1-504, the office shall make an adoption document available as provided in Sections 78B-6-141 and 78B-6-144.
 - (7) The office shall make rules in accordance with Title 63G, Chapter 3, Utah

6335	Administrative Rulemaking Act, establishing procedures and the content of forms as follows:
6336	(a) for the inspection of adoption documents under Subsection 78B-6-141(4);
6337	(b) for a birth parent's election to permit identifying information about the birth parent
6338	to be made available, under Section 78B-6-141;
6339	(c) for the release of information by the mutual-consent, voluntary adoption registry,
6340	under Section 78B-6-144;
6341	(d) for collecting fees and donations under Section 78B-6-144.5; and
6342	(e) for the review and approval of a request described in Subsection (3)(d).
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6344	[26-2-23.] <u>26B-8-126.</u> Records required to be kept by health care institutions
6345	Information filed with local registrar and department.
6346	(1) (a) All administrators or other persons in charge of hospitals, nursing homes, or
6347	other institutions, public or private, to which persons resort for treatment of diseases,
6348	confinements, or are committed by law, shall record all the personal and statistical
6349	information about patients of their institutions as required in certificates prescribed by this
6350	[chapter] <u>part</u> .
6351	(b) The information described in Subsection (1)(a) shall:
6352	(i) be recorded for collection at the time of admission of a patient;
6353	(ii) be obtained from the patient, if possible; and
6354	(iii) if the information cannot be obtained from the patient, the information shall be
6355	secured in as complete a manner as possible from other persons acquainted with the facts.
6356	(2) (a) When a dead body or dead fetus is released or disposed of by an institution,
6357	the person in charge of the institution shall keep a record showing:
6358	(i) the name of the deceased;
6359	(ii) the date of death of the deceased;
6360	(iii) the name and address of the person to whom the dead body or dead fetus is
6361	released; and
6362	(iv) the date that the dead body or dead fetus is removed from the institution.
6363	(b) If final disposal is by the institution, the date, place, manner of disposition, and the
6364	name of the person authorizing disposition shall be recorded by the person in charge of the
6365	institution.

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(3) Not later than the tenth day of each month, the administrator of each institution

6367	shall cause to be sent to the local registrar and the department a list of all births, deaths, fetal
6368	deaths, and induced abortions occurring in the institution during the preceding month. The
6369	list shall be in the form prescribed by the state registrar.

(4) A person or institution who, in good faith, releases a dead body or dead fetus, under this section, to a funeral service director or a dispositioner is immune from civil liability connected, directly or indirectly, with release of the dead body or dead fetus.

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- [26-2-24.] <u>26B-8-127.</u> Marriage licenses -- Execution and filing requirements.
- 6375 (1) The state registrar shall supply county clerks with application forms for marriage 6376 licenses.
- 6377 (2) Completed applications shall be transmitted by the clerks to the state registrar monthly.
- 6379 (3) The personal identification information contained on each application for a
 6380 marriage license filed with the county clerk shall be entered on a form supplied by the state
 6381 registrar.
- 6382 (4) The person performing the marriage shall furnish the date and place of marriage and his name and address.
 - (5) The form described in Subsection (1) shall be completed and certified by the county clerk before it is filed with the state registrar.

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- [26-2-25.] <u>26B-8-128.</u> Divorce or adoption -- Duty of court clerk to file certificates or reports.
- (1) For each adoption, annulment of adoption, divorce, and annulment of marriage ordered or decreed in this state, the clerk of the court shall prepare a divorce certificate or report of adoption on a form furnished by the state registrar.
- (2) The petitioner shall provide the information necessary to prepare the certificate or report under Subsection (1).
 - (3) The clerk shall:
 - (a) prepare the certificate or report under Subsection (1); and
- (b) complete the remaining entries for the certificate or report immediately after the decree or order becomes final.
 - (4) On or before the 15th day of each month, the clerk shall forward the divorce

certificates and reports of adoption under Subsection (1) completed by the clerk during the preceding month to the state registrar.

- (5) (a) A report of adoption under Subsection (1) may be provided to the attorney who is providing representation of a party to the adoption or the child-placing agency, as defined in Section 78B-6-103, that is placing the child.
- (b) If a report of adoption is provided to the attorney or the child-placing agency, as defined in Section 78B-6-103, the attorney or the child-placing agency shall immediately provide the report of adoption to the state registrar.

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[26-2-26.] <u>26B-8-129.</u> Certified copies of vital records -- Preparation by state and local registrars -- Evidentiary value.

- (1) The state registrar and local registrars authorized by the department under Section [26-2-21] 26B-8-125 may prepare typewritten, photographic, electronic, or other reproductions of vital records and certify their correctness.
- (2) Certified copies of the vital record, or authorized reproductions of the original, issued by either the state registrar or a designated local registrar are prima facie evidence in all courts of the state with like effect as the vital record.

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[26-2-27.] <u>26B-8-130.</u> Identifying birth certificates of missing persons -- Procedures.

- (1) As used in this section:
- (a) "Division" means the Criminal Investigations and Technical Services Division,
 Department of Public Safety, in Title 53, Chapter 10, Criminal Investigations and Technical
 Services Act.
- (b) "Missing child" means a person younger than 18 years of age who is missing from the person's home environment or a temporary placement facility for any reason, and whose whereabouts cannot be determined by the person responsible for the child's care.
 - (c) "Missing person" means a person who:
 - (i) is missing from the person's home environment; and
- 6428 (ii) (A) has a physical or mental disability;
- 6429 (B) is missing under circumstances that indicate that the person is endangered, 6430 missing involuntarily, or a victim of a catastrophe; or

6431 (C) is a missing child.

- (2) (a) In accordance with Section 53-10-203, upon the state registrar's notification by the division that a person who was born in this state is missing, the state and local registrars shall flag the registered birth certificate of that person so that when a copy of the registered birth certificate or information regarding the birth record is requested, the state and local registrars are alerted to the fact the registered birth certificate is that of a missing person.
- (b) Upon notification by the division the missing person has been recovered, the state and local registrars shall remove the flag from that person's registered birth certificate.
- (3) The state and local registrars may not provide a copy of a registered birth certificate of any person whose record is flagged under Subsection (2), except as approved by the division.
- (4) (a) When a copy of the registered birth certificate of a person whose record has been flagged is requested in person, the state or local registrar shall require that person to complete a form supplying that person's name, address, telephone number, and relationship to the missing person, and the name and birth date of the missing person.
- (b) The state or local registrar shall inform the requester that a copy of the registered birth certificate will be mailed to the requester.
- (c) The state or local registrar shall note the physical description of the person making the request, and shall immediately notify the division of the request and the information obtained pursuant to this Subsection (4).
- (5) When a copy of the registered birth certificate of a person whose record has been flagged is requested in writing, the state or local registrar or personnel of the state or local registrar shall immediately notify the division, and provide it with a copy of the written request.

[26-2-28.] 26B-8-131. Birth certificate for foreign adoptees.

Upon presentation of a court order of adoption and an order establishing the fact, time, and place of birth under Section [26-2-15] 26B-6-119, the department shall prepare a birth certificate for an individual who:

- (1) was adopted under the laws of this state; and
- (2) was at the time of adoption, as a child or as an adult, considered an alien child or adult for whom the court received documentary evidence of lawful admission under Section 78B-6-108.

6463 [26-34-4.] 26B-8-132. Determination of death made by registered nurse. (1) As used in this section[:], 6464 (a) "Health care facility" means the same as that term is defined in Section 26-21-2. 6465 (b) "Physician" means a physician licensed under: 6466 (i) Title 58, Chapter 67, Utah Medical Practice Act; or 6467 6468 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.] [(c) "Registered | "registered | nurse" means a registered nurse licensed under Title 6469 6470 58, Chapter 31b, Nurse Practice Act. (2) (a) An individual is dead if the individual has sustained either: 6471 6472 (i) irreversible cessation of circulatory and respiratory functions; or 6473 (ii) irreversible cessation of all functions of the entire brain, including the brain stem. 6474 (b) A determination of death shall be made in accordance with this part and accepted medical standards. 6475 6476 (2) (3) A registered nurse may make a determination of death of an individual if: 6477 (a) an attending physician has: (i) documented in the individual's medical or clinical record that the individual's death 6478 is anticipated due to illness, infirmity, or disease no later than 180 days after the day on 6479 6480 which the physician makes the documentation; and 6481 (ii) established clear assessment procedures for determining death; (b) the death actually occurs within the 180-day period described in Subsection [(2)] 6482 6483 (3) (a); and (c) at the time of the documentation described in Subsection [(2)] (3) (a), the 6484 physician authorized the following, in writing, to make the determination of death: 6485 6486 (i) one or more specific registered nurses; or (ii) if the individual is in a health care facility that has complied with Subsection [(5)] 6487 (6), all registered nurses that the facility employs. 6488 6489 (4) A registered nurse who has determined death under this section shall: (a) document the clinical criteria for the determination in the individual's medical or 6490 6491 clinical record; 6492 (b) notify the physician described in Subsection $[\frac{(2)}{(2)}]$ (3); and 6493 (c) ensure that the death certificate includes: (i) the name of the deceased; 6494

6495 (ii) the presence of a contagious disease, if known; and 6496 (iii) the date and time of death. [(4)] (5) Except as otherwise provided by law or rule, a physician [licensed under 6497 6498 Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic 6499 Medical Practice Act, shall certify a determination of death described in Subsection (3) (4) 6500 within 24 hours after the registered nurse makes the determination of death. 6501 (5) (a) For a health care facility to be eligible for a general authorization described in Subsection [(2)] (3) (c), the facility shall adopt written policies and procedures 6502 6503 that provide for the determination of death by a registered nurse under this section. 6504 (b) A registered nurse that a health care facility employs may not make a determination of death under this section unless the facility has adopted the written policies 6505 6506 and procedures described in Subsection [(5)] (6) (a). 6507 [(6)] (7) The department may make rules, in accordance with Title 63G, Chapter 3, 6508 Utah Administrative Rulemaking Act, to ensure the appropriate determination of death under 6509 this section. 6510 6511 [26-23-5.] 26B-8-133. Unlawful acts concerning certificates, records, and 6512 reports -- Unlawful transportation or acceptance of dead human body. 6513 It is unlawful for any person, association, or corporation and the officers of any of 6514 them: 6515 (1) to willfully and knowingly make any false statement in a certificate, record, or 6516 report required to be filed with the department, or in an application for a certified copy of a 6517 vital record, or to willfully and knowingly supply false information intending that the information be used in the preparation of any report, record, or certificate, or an amendment 6518 6519 to any of these: 6520 (2) to make, counterfeit, alter, amend, or mutilate any certificate, record, or report 6521 required to be filed under this code or a certified copy of the certificate, record, or report 6522 without lawful authority and with the intent to deceive; 6523 (3) to willfully and knowingly obtain, possess, use, sell, furnish, or attempt to obtain, 6524 possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record,

report, or certified copy of any of them, including any that are counterfeited, altered,

amended, or mutilated;

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- 6527 (4) without lawful authority, to possess any certificate, record, or report, required by 6528 the department or a copy or certified copy of the certificate, record, or report, knowing it to 6529 have been stolen or otherwise unlawfully obtained; or
 - (5) to willfully and knowingly transport or accept for transportation, interment, or other disposition a dead human body without a permit required by law.

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[26-23-5.5.] 26B-8-134. Illegal use of birth certificate -- Penalties.

- (1) It is a third degree felony for any person to willfully and knowingly:
- (a) and with the intent to deceive, obtain, possess, use, sell, furnish, or attempt to obtain, possess, use, sell, or furnish to another any certificate of birth or certified copy of a certificate of birth knowing that the certificate or certified copy was issued upon information which is false in whole or in part or which relates to the birth of another person, whether living or deceased; or
- (b) furnish or process a certificate of birth or certified copy of a certificate of birth with the knowledge or intention that it be used for the purpose of deception by a person other than the person to whom the certificate of birth relates.
- (2) The specific criminal violations and the criminal penalty under this section take precedence over any more general criminal offense as described in Section 26-23-5.

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Part 2. Utah Medical Examiner.

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[26-4-2.] <u>26B-8-201.</u> Definitions.

- As used in this [chapter] part:
 - (1) "Dead body" means the same as that term is defined in Section 26-2-2.
- 6551 (2) (a) "Death by violence" means death that resulted by the decedent's exposure to physical, mechanical, or chemical forces.
 - (b) "Death by violence" includes death that appears to have been due to homicide, death that occurred during or in an attempt to commit rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or any attempt to commit any of the foregoing offenses.

- (3) "Immediate relative" means an individual's spouse, child, parent, sibling,grandparent, or grandchild.
- 6561 (4) "Health care professional" means any of the following while acting in a professional capacity:
- (a) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 6565 (b) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician 6566 Assistant Act; or
- 6567 (c) an advance practice registered nurse licensed under Subsection 6568 58-31b-301(2)(e).
- 6569 (5) "Medical examiner" means the state medical examiner appointed pursuant to Section 26-4-4 or a deputy appointed by the medical examiner.
 - (6) "Medical examiner record" means:

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- (a) all information that the medical examiner obtains regarding a decedent; and
- (b) reports that the medical examiner makes regarding a decedent.
- 6574 (7) "Regional pathologist" means a trained pathologist licensed to practice medicine 6575 and surgery in the state, appointed by the medical examiner pursuant to Subsection 6576 26-4-4(3).
 - (8) "Sudden death while in apparent good health" means apparently instantaneous death without obvious natural cause, death during or following an unexplained syncope or coma, or death during an acute or unexplained rapidly fatal illness.
 - (9) "Sudden infant death syndrome" means the death of a child who was thought to be in good health or whose terminal illness appeared to be so mild that the possibility of a fatal outcome was not anticipated.
 - (10) "Suicide" means death caused by an intentional and voluntary act of an individual who understands the physical nature of the act and intends by such act to accomplish self-destruction.
 - (11) "Unattended death" means a death that occurs more than 365 days after the day on which a health care professional examined or treated the deceased individual for any purpose, including writing a prescription.
 - (12) (a) "Unavailable for postmortem investigation" means that a dead body is:
 - (i) transported out of state;

6591	(ii) buried at sea;
6592	(iii) cremated;
6593	(iv) processed by alkaline hydrolysis; or
6594	(v) otherwise made unavailable to the medical examiner for postmortem investigation
6595	or autopsy.
6596	(b) "Unavailable for postmortem investigation" does not include embalming or burial
6597	of a dead body pursuant to the requirements of law.
6598	(13) "Within the scope of the decedent's employment" means all acts reasonably
6599	necessary or incident to the performance of work, including matters of personal convenience
6600	and comfort not in conflict with specific instructions.
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6602	[26-4-4.] <u>26B-8-202.</u> Chief medical examiner Appointment Qualifications
6603	Authority.
6604	(1) The executive director, with the advice of an advisory board consisting of the
6605	chairman of the Department of Pathology at the University of Utah medical school and the
6606	dean of the law school at the University of Utah, shall appoint a chief medical examiner who
6607	shall be licensed to practice medicine in the state and shall meet the qualifications of a
6608	forensic pathologist, certified by the American Board of Pathologists.
6609	(2) (a) The medical examiner shall serve at the will of the executive director.
6610	(b) The medical examiner has authority to:
6611	(i) employ medical, technical and clerical personnel as may be required to effectively
6612	administer this chapter, subject to the rules of the department and the state merit system;
6613	(ii) conduct investigations and pathological examinations;
6614	(iii) perform autopsies authorized in this title;
6615	(iv) conduct or authorize necessary examinations on dead bodies; and
6616	(v) notwithstanding the provisions of Subsection 26-28-122(3), retain tissues and
6617	biological samples:
6618	(A) for scientific purposes;
6619	(B) where necessary to accurately certify the cause and manner of death; or
6620	(C) for tissue from an unclaimed body, subject to Section 26-4-25, in order to donate
6621	the tissue or biological sample to an individual who is affiliated with an established search
6622	and rescue dog organization, for the purpose of training a dog to search for human remains.

- (c) In the case of an unidentified body, the medical examiner shall authorize or 6623 6624 conduct investigations, tests and processes in order to determine its identity as well as the cause of death. 6625
- (3) The medical examiner may appoint regional pathologists, each of whom shall be 6626 6627 approved by the executive director.

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[26-4-5.] 26B-8-203. County medical examiners.

The county executive, with the advice and consent of the county legislative body, may appoint medical examiners for their respective counties.

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- [26-4-6.] 26B-8-204. Investigation of deaths -- Requests for autopsies.
- (1) The following have authority to investigate a death described in Section 26-4-7 6634 and any other case which may be within their jurisdiction: 6635
 - (a) the attorney general or an assistant attorney general;
- 6637 (b) the district attorney or county attorney who has criminal jurisdiction over the death 6638 or case:
- (c) a deputy of the district attorney or county attorney described in Subsection (1)(b): 6639 6640 or
 - (d) a peace officer within the jurisdiction described in Subsection (1)(b).
 - (2) If, in the opinion of the medical examiner, an autopsy should be performed or if an autopsy is requested by the district attorney or county attorney having criminal jurisdiction, or by the attorney general, the autopsy shall be performed by the medical examiner or a regional pathologist.

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- [26-4-7.] 26B-8-205. Custody by medical examiner.
- Upon notification under Section 26-4-8 or investigation by the medical examiner's 6648 6649 office, the medical examiner shall assume custody of a deceased body if it appears that 6650 death:
 - (1) was by violence, gunshot, suicide, or accident;
 - (2) was sudden death while in apparent good health;
- 6653 (3) occurred unattended, except that an autopsy may only be performed in 6654 accordance with the provisions of Subsection 26-4-9(3);

- 6655 (4) occurred under suspicious or unusual circumstances;
- (5) resulted from poisoning or overdose of drugs;
- (6) resulted from a disease that may constitute a threat to the public health;
- 6658 (7) resulted from disease, injury, toxic effect, or unusual exertion incurred within the scope of the decedent's employment;
 - (8) was due to sudden infant death syndrome;
- (9) occurred while the decedent was in prison, jail, police custody, the state hospital,
 or in a detention or medical facility operated for the treatment of persons with a mental
 illness, persons who are emotionally disturbed, or delinquent persons;
 - (10) resulted directly from the actions of a law enforcement officer, as defined in Section 53-13-103;
 - (11) was associated with diagnostic or therapeutic procedures; or
 - (12) was described in this section when request is made to assume custody by a county or district attorney or law enforcement agency in connection with a potential homicide investigation or prosecution.

[26-4-8.] <u>26B-8-206.</u> Discovery of dead body -- Notice requirements -- Procedure.

- (1) When death occurs under circumstances listed in Section 26-4-7, the person or persons finding or having custody of the body shall immediately notify the nearest law enforcement agency. The law enforcement agency having jurisdiction over the case shall then proceed to the place where the body is and conduct an investigation concerning the cause and circumstances of death for the purpose of determining whether there exists any criminal responsibility for the death.
- (2) On a determination by the law enforcement agency that death may have occurred in any of the ways described in Section 26-4-7, the death shall be reported to the district attorney or county attorney having criminal jurisdiction and to the medical examiner by the law enforcement agency having jurisdiction over the investigation.
- (3) The report shall be made by the most expeditious means available. Failure to give notification or report to the district attorney or county attorney having criminal jurisdiction and medical examiner is a class B misdemeanor.

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[26-4-9.] <u>26B-8-207.</u> Custody of dead body and personal effects -- Examination of scene of death -- Preservation of body -- Autopsies.

- (1) (a) Upon notification of a death under Section 26-4-8, the medical examiner shall assume custody of the deceased body, clothing on the body, biological samples taken, and any article on or near the body which may aid the medical examiner in determining the cause of death except those articles which will assist the investigative agency to proceed without delay with the investigation.
- (b) In all cases the scene of the event may not be disturbed until authorization is given by the senior ranking peace officer from the law enforcement agency having jurisdiction of the case and conducting the investigation.
- (c) Where death appears to have occurred under circumstances listed in Section 26-4-7, the person or persons finding or having custody of the body, or jurisdiction over the investigation of the death, shall take reasonable precautions to preserve the body and body fluids so that minimum deterioration takes place.
 - (d) A person may not move a body in the custody of the medical examiner unless:
- (i) the medical examiner, or district attorney or county attorney that has criminal jurisdiction, authorizes the person to move the body;
- (ii) a designee of an individual listed in Subsection (1)(d) authorizes the person to move the body;
 - (iii) not moving the body would be an affront to public decency or impractical; or
- (iv) the medical examiner determines the cause of death is likely due to natural causes.
- (e) The body can under direction of the medical examiner or the medical examiner's designee be moved to a place specified by the medical examiner or the medical examiner's designee.
- (2) (a) If the medical examiner has custody of a body, a person may not clean or embalm the body without first obtaining the medical examiner's permission.
 - (b) An intentional or knowing violation of Subsection (2)(a) is a class B misdemeanor.
- (3) (a) When the medical examiner assumes lawful custody of a body under Subsection 26-4-7(3) solely because the death was unattended, an autopsy may not be performed unless requested by the district attorney, county attorney having criminal jurisdiction, or law enforcement agency having jurisdiction of the place where the body is

6719	found.
6720	(b) The county attorney or district attorney and law enforcement agency having
6721	jurisdiction shall consult with the medical examiner to determine the need for an autopsy.
6722	(c) If the deceased chose not to be seen or treated by a health care professional for a
6723	spiritual or religious reason, a district attorney, county attorney, or law enforcement agency,
6724	may not request an autopsy or inquest under Subsection (3)(a) solely because of the
6725	deceased's choice.
6726	(d) The medical examiner or medical examiner's designee may not conduct a
6727	requested autopsy described in Subsection (3)(a) if the medical examiner or medical
6728	examiner's designee determines:
6729	(i) the request violates Subsection (3)(c); or
6730	(ii) the cause of death can be determined without performing an autopsy.
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6732	[26-2-18.5.] <u>26B-8-208.</u> Rendering a dead body unavailable for postmortem
6733	investigation.
6734	(1) As used in this section:
6735	(a) "Medical examiner" means the same as that term is defined in Section [26-4-2]
6736	<u>26B-X-XXX</u> .
6737	(b) "Unavailable for postmortem investigation" means the same as that term is
6738	defined in Section [26-4-2] <u>26B-X-XXX</u> .
6739	(2) It is unlawful for a person to engage in any conduct that makes a dead body
6740	unavailable for postmortem investigation, unless, before engaging in that conduct, the person
6741	obtains a permit from the medical examiner to render the dead body unavailable for
6742	postmortem investigation, under Section [26-4-29] <u>26B-X-XXX</u> , if the person intends to
6743	make the body unavailable for postmortem investigation.
6744	(3) A person who violates Subsection (2) is guilty of a third degree felony.
6745	(4) If a person engages in conduct that constitutes both a violation of this section and
6746	a violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 supersede
6747	the provisions and penalties of this section.
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6749	[26-4-10.] <u>26B-8-209.</u> Certification of cause of death.

(1) (a) For a death under any of the circumstances described in Section 26-4-7, only

the medical examiner or the medical examiner's designee may certify the cause of death.

- (b) An individual who knowingly certifies the cause of death in violation of Subsection (1)(a) is guilty of a class B misdemeanor.
- 6754 (2) (a) For a death described in Section 26-4-7, an individual may not knowingly give 6755 false information, with the intent to mislead, to the medical examiner or the medical 6756 examiner's designee.
 - (b) A violation of Subsection (2)(a) is a class B misdemeanor.

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[26-4-10.5.] <u>26B-8-210.</u> Medical examiner to report death caused by prescribed controlled substance poisoning or overdose.

- (1) If a medical examiner determines that the death of a person who is 12 years old or older at the time of death resulted from poisoning or overdose involving a prescribed controlled substance, the medical examiner shall, within three business days after the day on which the medical examiner determines the cause of death, send a written report to the Division of Professional Licensing, created in Section 58-1-103, that includes:
 - (a) the decedent's name;
- (b) each drug or other substance found in the decedent's system that may have contributed to the poisoning or overdose, if known; and
- (c) the name of each person the medical examiner has reason to believe may have prescribed a controlled substance described in Subsection (1)(b) to the decedent.
 - (2) This section does not create a new cause of action.

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6773 [26B-8-211. Records and reports of investigations.

- (1) A complete copy of all written records and reports of investigations and facts resulting from medical care treatment, autopsies conducted by any person on the body of the deceased who died in any manner listed in Section 26-4-7 and the written reports of any investigative agency making inquiry into the incident shall be promptly made and filed with the medical examiner.
- (2) The judiciary or a state or local government entity that retains a record, other than a document described in Subsection (1), of the decedent shall provide a copy of the record to the medical examiner:
 - (a) in accordance with federal law; and

- (b) upon receipt of the medical examiner's written request for the record.
- (3) Failure to submit reports or records described in Subsection (1) or (2), other than reports of a county attorney, district attorney, or law enforcement agency, within 10 days after the day on which the person in possession of the report or record receives the medical examiner's written request for the report or record is a class B misdemeanor.

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[26-4-12.] 26B-8-212. Order to exhume body -- Procedure.

- (1) In case of any death described in Section 26-4-7, when a body is buried without an investigation by the medical examiner as to the cause and manner of death, it shall be the duty of the medical examiner, upon being advised of the fact, to notify the district attorney or county attorney having criminal jurisdiction where the body is buried or death occurred. Upon notification, the district attorney or county attorney having criminal jurisdiction may file an action in the district court to obtain an order to exhume the body. A district judge may order the body exhumed upon an ex parte hearing.
- (2) (a) A body may not be exhumed until notice of the order has been served upon the executor or administrator of the deceased's estate, or if no executor or administrator has been appointed, upon the nearest heir of the deceased, determined as if the deceased had died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then the next heir in succession within the jurisdiction may be served.
- (b) The executor, administrator, or heir shall have 24 hours to notify the issuing court of any objection to the order prior to the time the body is exhumed. If no heirs can be located within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which may order that the body be exhumed forthwith.
- (c) Notification to the executor, administrator, or heir shall specifically state the nature of the action and the fact that any objection shall be filed with the issuing court within 24 hours of the time of service.
- (d) In the event an heir files an objection, the court shall set hearing on the matter at the earliest possible time and issue an order on the matter immediately at the conclusion of the hearing. Upon the receipt of notice of objection, the court shall immediately notify the county attorney who requested the order, so that the interest of the state may be represented at the hearing.
 - (e) When there is reason to believe that death occurred in a manner described in

6815	Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make
6816	a motion that the court, upon ex parte hearing, order the body exhumed forthwith and without
6817	notice. Upon a showing of exigent circumstances the court may order the body exhumed
6818	forthwith and without notice. In any event, upon motion of the district attorney or county
6819	attorney having criminal jurisdiction and upon the personal appearance of the medical
6820	examiner, the court for good cause may order the body exhumed forthwith and without
6821	notice.

- (3) An order to exhume a body shall be directed to the medical examiner, commanding the medical examiner to cause the body to be exhumed, perform the required autopsy, and properly cause the body to be reburied upon completion of the examination.
- (4) The examination shall be completed and the complete autopsy report shall be made to the district attorney or county attorney having criminal jurisdiction for any action the attorney considers appropriate. The district attorney or county attorney shall submit the return of the order to exhume within 10 days in the manner prescribed by the issuing court.

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[26-4-13.] <u>26B-8-213.</u> Autopsies -- When authorized.

- (1) The medical examiner shall perform an autopsy to:
 - (a) aid in the discovery and prosecution of a crime;
 - (b) protect an innocent person accused of a crime; and
 - (c) disclose hazards to public health.
 - (2) The medical examiner may perform an autopsy:
- (a) to aid in the administration of civil justice in life and accident insurance problems in accordance with Title 34A, Chapter 2, Workers' Compensation Act;
 - (b) in other cases involving questions of civil liability.

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[26-4-14.] <u>26B-8-214.</u> Certification of death by attending health care professional -- Deaths without medical attendance -- Cause of death uncertain -- Notice requirements.

(1) (a) A health care professional who treats or examines an individual within 365 days from the day on which the individual dies, shall certify the individual's cause of death to the best of the health care professional's knowledge and belief unless the health care professional determines the individual may have died in a manner described in Section

6847	26-4-7.
6848	(b) If a health care professional is unable to determine an individual's cause of death
6849	in accordance with Subsection (1)(a), the health care professional shall notify the medical
6850	examiner.

- (2) For an unattended death, the person with custody of the body shall notify the medical examiner of the death.
- (3) If the medical examiner determines there may be criminal responsibility for a death, the medical examiner shall notify:
 - (a) the district attorney or county attorney that has criminal jurisdiction; or
- (b) the head of the law enforcement agency that has jurisdiction to investigate the death.

[26-4-15.] <u>26B-8-215.</u> Deaths in medical centers and federal facilities.

All death certificates of any decedent who died in a teaching medical center or a federal medical facility unattended or in the care of an unlicensed physician or other medical personnel shall be signed by the licensed supervisory physician, attending physician or licensed resident physician of the medical center or facility.

[26-4-16.] <u>26B-8-216.</u> Release of body for funeral preparations.

- (1) (a) Where a body is held for investigation or autopsy under this chapter or for a medical investigation permitted by law, the body shall, if requested by the person given priority under Section 58-9-602, be released for funeral preparations no later than 24 hours after the arrival at the office of the medical examiner or regional medical facility.
 - (b) An extension may be ordered only by a district court.
- 6871 (2) The right and duty to control the disposition of a deceased person is governed by Sections 58-9-601 through 58-9-606.

[26-4-17.] <u>26B-8-217.</u> Records of medical examiner -- Confidentiality.

- (1) The medical examiner shall maintain complete, original records for the medical examiner record, which shall:
- 6877 (a) be properly indexed, giving the name, if known, or otherwise identifying every individual whose death is investigated;

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(b) indicate the place where the body was found; 6879 6880 (c) indicate the date of death; (d) indicate the cause and manner of death; 6881 (e) indicate the occupation of the decedent, if available: 6882 6883 (f) include all other relevant information concerning the death; and 6884 (g) include a full report and detailed findings of the autopsy or report of the 6885 investigation. 6886 (2) (a) Upon written request from an individual described in Subsections (2)(a)(i) through (iv), the medical examiner shall provide a copy of the medical examiner's final report 6887 6888 of examination for the decedent, including the autopsy report, toxicology report, lab reports, 6889 and investigative reports to any of the following: 6890 (i) a decedent's immediate relative; 6891 (ii) a decedent's legal representative; 6892 (iii) a physician or physician assistant who attended the decedent during the year 6893 before the decedent's death; or 6894 (iv) a county attorney, a district attorney, a criminal defense attorney, or other law 6895 enforcement official with jurisdiction, as necessary for the performance of the attorney or 6896 official's professional duties. 6897 (b) Upon written request from the director or a designee of the director of an entity 6898 described in Subsections (2)(b)(i) through (iv), the medical examiner may provide a copy of 6899 the of the medical examiner's final report of examination for the decedent, including any 6900 other reports described in Subsection (2)(a), to any of the following entities as necessary for 6901 performance of the entity's official purposes: 6902 (i) a local health department: 6903 (ii) a local mental health authority; 6904 (iii) a public health authority; or 6905 (iv) another state or federal governmental agency. (c) The medical examiner may provide a copy of the medical examiner's final report of 6906 6907 examination, including any other reports described in Subsection (2)(a), if the final report

(3) Reports provided under Subsection (2) may not include records that the medical

department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

relates to an issue of public health or safety, as further defined by rule made by the

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6911	examiner obtains from a third party in the course of investigating the decedent's death.
6912	(4) The medical examiner may provide a medical examiner record to a researcher
6913	who:
6914	(a) has an advanced degree;
6915	(b) (i) is affiliated with an accredited college or university, a hospital, or another
6916	system of care, including an emergency medical response or a local health agency; or
6917	(ii) is part of a research firm contracted with an accredited college or university, a
6918	hospital, or another system of care;
6919	(c) requests a medical examiner record for a research project or a quality
6920	improvement initiative that will have a public health benefit, as determined by the
6921	department; and
6922	(d) provides to the medical examiner an approval from:
6923	(i) the researcher's sponsoring organization; and
6924	(ii) the Utah Department of Health and Human Services Institutional Review Board.
6925	(5) Records provided under Subsection (4) may not include a third party record,
6926	unless:
6927	(a) a court has ordered disclosure of the third party record; and
6928	(b) disclosure is conducted in compliance with state and federal law.
6929	(6) A person who obtains a medical examiner record under Subsection (4) shall:
6930	(a) maintain the confidentiality of the medical examiner record by removing personally
6931	identifying information about a decedent or the decedent's family and any other information
6932	that may be used to identify a decedent before using the medical examiner record in
6933	research;
6934	(b) conduct any research within and under the supervision of the Office of the Medical
6935	Examiner, if the medical examiner record contains a third party record with personally
6936	identifiable information;
6937	(c) limit the use of a medical examiner record to the purpose for which the person
6938	requested the medical examiner record;
6939	(d) destroy a medical examiner record and the data abstracted from the medical
6940	examiner record at the conclusion of the research for which the person requested the
6941	medical examiner record;

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(e) reimburse the medical examiner, as provided in Section 26B-1-209, for any costs

incurred by the medical examiner in providing a medical examiner record;

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- (f) allow the medical examiner to review, before public release, a publication in which data from a medical examiner record is referenced or analyzed; and
- (g) provide the medical examiner access to the researcher's database containing data from a medical examiner record, until the day on which the researcher permanently destroys the medical examiner record and all data obtained from the medical examiner record.
- (7) The department may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consideration of applicable state and federal law, to establish permissible uses and disclosures of a medical examiner record or other record obtained under this section.
- (8) Except as provided in this chapter or ordered by a court, the medical examiner may not disclose any part of a medical examiner record.
- (9) A person who obtains a medical examiner record under Subsection (4) is guilty of a class B misdemeanor, if the person fails to comply with the requirements of Subsections (6)(a) through (d).

[26-4-18.] 26B-8-218. Records of medical examiner -- Admissibility as evidence -- Subpoena of person who prepared record.

The records of the medical examiner or transcripts thereof certified by the medical examiner are admissible as evidence in any civil action in any court in this state except that statements by witnesses or other persons, unless taken pursuant to Section 26-4-21, as conclusions upon extraneous matters are not hereby made admissible. The person who prepared a report or record offered in evidence hereunder may be subpoenaed as a witness in the case by any party.

[26-4-19.] 26B-8-219. Personal property of deceased -- Disposition.

- (1) Personal property of the deceased not held as evidence shall be turned over to the legal representative of the deceased within 30 days after completion of the investigation of the death of the deceased. If no legal representative is known, the county attorney, district attorney, or the medical examiner shall, within 30 days after the investigation, turn the personal property over to the county treasurer to be handled pursuant to the escheat laws.
 - (2) An affidavit shall be filed with the county treasurer by the county attorney, district

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attorney, or the medical examiner within 30 days after investigation of the death of the deceased showing the money or other property belonging to the estate of the deceased person which has come into his possession and the disposition made of the property.

(3) Property required to be turned over to the legal representative of the deceased may be held longer than 30 days if, in the opinion of the county attorney, district attorney, or attorney general, the property is necessary evidence in a court proceeding. Upon conclusion of the court proceedings, the personal property shall be turned over as described in this section and in accordance with the rules of the court.

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[26-4-20.] 26B-8-220. Officials not liable for authorized acts.

Except as provided in this [chapter] part, a criminal or civil action may not arise against the county attorney, district attorney, or his deputies, the medical examiner or his deputies, or regional pathologists for authorizing or performing autopsies authorized by this [chapter] part or for any other act authorized by this [chapter] part.

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[26-4-21.] 26B-8-221. Authority of county attorney or district attorney to subpoena witnesses and compel testimony -- Determination if decedent died by unlawful means.

- (1) The district attorney or county attorney having criminal jurisdiction may subpoena witnesses and compel testimony concerning the death of any person and have such testimony reduced to writing under his direction and may employ a shorthand reporter for that purpose at the same compensation as is allowed to reporters in the district courts. When the testimony has been taken down by the shorthand reporter, a transcript thereof, duly certified, shall constitute the deposition of the witness.
- (2) Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.

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[26-4-22.] 26B-8-222. Additional powers and duties of department.

The department may:

- (1) establish rules to carry out the provisions of this chapter;
- (2) arrange for the state health laboratory to perform toxicologic analysis for public or

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- 7008 (3) cooperate and train law enforcement personnel in the techniques of criminal investigation as related to medical and pathological matters; and
- 7010 (4) pay to private parties, institutions or funeral directors the reasonable value of 7011 services performed for the medical examiner's office.

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[26-4-23.] <u>26B-8-223.</u> Authority of examiner to provide organ or other tissue for transplant purposes.

- (1) When requested by the licensed physician of a patient who is in need of an organ or other tissue for transplant purpose, by a legally created Utah eye bank, organ bank or medical facility, the medical examiner may provide an organ or other tissue if:
- (a) a decedent who may provide a suitable organ or other tissue for the transplant is in the custody of the medical examiner;
- (b) the medical examiner is assured that the requesting party has made reasonable search for and inquiry of next of kin of the decedent and that no objection by the next of kin is known by the requesting party; and
- (c) the removal of the organ or other tissue will not interfere with the investigation or autopsy or alter the post-mortem facial appearance.
- (2) When the medical examiner is in custody of a decedent who may provide a suitable organ or other tissue for transplant purposes, he may contact the appropriate eye bank, organ bank or medical facility and notify them concerning the suitability of the organ or other tissue. In such contact the medical examiner may disclose the name of the decedent so that necessary clearances can be obtained.
- (3) No person shall be held civilly or criminally liable for any acts performed pursuant to this section.

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- [26-4-24.] <u>26B-8-224.</u> Autopsies -- Persons eligible to authorize.
- 7034 (1) Autopsies may be authorized:
- 7035 (a) by the commissioner of the Labor Commission or the commissioner's designee as 7036 provided in Section 34A-2-603;
 - (b) by individuals by will or other written document;
- 7038 (c) upon a decedent by the next of kin in the following order and as known: surviving

- spouse, child, if 18 years or older, otherwise the legal guardian of the child, parent, sibling, uncle or aunt, nephew or niece, cousin, others charged by law with the duty of burial, or friend assuming the obligation of burial;
- 7042 (d) by the county attorney, district attorney, or the district attorney's deputy, or a 7043 district judge; and
 - (e) by the medical examiner as provided in this chapter.

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- 7045 (2) Autopsies authorized under Subsections (1)(a) and (1)(d) shall be performed by a certified pathologist.
- 7047 (3) No criminal or civil action arises against a pathologist or a physician who proceeds in good faith and performs an autopsy authorized by this section.

[26-4-25.] <u>26B-8-225.</u> Burial of an unclaimed body -- Request by the school of medicine at the University of Utah -- Medical examiner may retain tissue for dog training.

- (1) Except as described in Subsection (2) or (3), a county shall provide, at the county's expense, decent burial for an unclaimed body found in the county.
- (2) A county is not responsible for decent burial of an unclaimed body found in the county if the body is requested by the dean of the school of medicine at the University of Utah under Section 53B-17-301.
- (3) For an unclaimed body that is temporarily in the medical examiner's custody before burial under Subsection (1), the medical examiner may retain tissue from the unclaimed body in order to donate the tissue to an individual who is affiliated with an established search and rescue dog organization, for the purpose of training a dog to search for human remains.

[26-4-26.] <u>26B-8-226.</u> Social security number in certification of death.

A certification of death shall include, if known, the social security number of the deceased person, and a copy of the certification shall be sent to the Office of Recovery Services within the [Department of Human Services] department upon request.

[26-4-27.] <u>26B-8-227.</u> Registry of unidentified deceased persons.

(1) If the identity of a deceased person over which the medical examiner has

- jurisdiction under Section 26-4-7 is unknown, the medical examiner shall do the following before releasing the body to the county in which the body was found as provided in Section 26-4-25:
 - (a) assign a unique identifying number to the body;

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- (b) create and maintain a file under the assigned number;
- 7076 (c) examine the body, take samples, and perform other related tasks for the purpose of deriving information that may be useful in ascertaining the identity of the deceased person;
- 7078 (d) use the identifying number in all records created by the medical examiner that 7079 pertains to the body;
- 7080 (e) record all information pertaining to the body in the file created and maintained 7081 under Subsection (1)(b);
- 7082 (f) communicate the unique identifying number to the county in which the body was 7083 found; and
 - (g) access information from available government sources and databases in an attempt to ascertain the identity of the deceased person.
 - (2) A county which has received a body to which Subsection (1) applies:
 - (a) shall adopt and use the same identifying number assigned by Subsection (1) in all records created by the county that pertain to the body;
 - (b) require any funeral director or sexton who is involved in the disposition of the body to adopt and use the same identifying number assigned by Subsection (1) in all records created by the funeral director or sexton pertaining to the body; and
 - (c) shall provide a decent burial for the body.
 - (3) Within 30 days of receiving a body to which Subsection (1) applies, the county shall inform the medical examiner of the disposition of the body including the burial plot. The medical examiner shall record this information in the file created and maintained under Subsection (1)(b).
 - (4) The requirements of Subsections (1) and (6) apply to a county examiner appointed under Section 26-4-5, with the additional requirements that the county examiner:
 - (a) obtain a unique identifying number from the medical examiner for the body; and
- (b) send to the medical examiner a copy of the file created and maintained in
 accordance with Subsection (1)(b), including the disposition of the body and burial plot, within
 30 days of releasing the body.

- 7103 (5) The medical examiner shall maintain a file received under Subsection (4) in the 7104 same way that it maintains a file created and maintained by the medical examiner in 7105 accordance with Subsection (1)(b).
 - (6) The medical examiner shall cooperate and share information generated and maintained under this section with a person who demonstrates:
 - (a) a legitimate personal or governmental interest in determining the identity of a deceased person; and
- 7110 (b) a reasonable belief that the body of that deceased person may have come into the 7111 custody of the medical examiner.

7113 [26-4-28.] 26B-8-228. Testing for suspected suicides -- Maintaining information 7114 -- Compensation to deputy medical examiners.

- (1) In all cases where it is suspected that a death resulted from suicide, including assisted suicide, the medical examiner shall endeavor to have the following tests conducted upon samples taken from the body of the deceased:
- (a) a test that detects all of the substances included in the volatiles panel of the Bureau of Forensic Toxicology within the Department of Health;
- (b) a test that detects all of the substances included in the drugs of abuse panel of the Bureau of Forensic Toxicology within the Department of Health; and
- (c) a test that detects all of the substances included in the prescription drug panel of the Bureau of Forensic Toxicology within the Department of Health.
- (2) The medical examiner shall maintain information regarding the types of substances found present in the samples taken from the body of a person who is suspected to have died as a result of suicide or assisted suicide.
- (3) Within funds appropriated by the Legislature for this purpose, the medical examiner shall provide compensation, at a standard rate determined by the medical examiner, to a deputy medical examiner who collects samples for the purposes described in Subsection (1).

7132 [26-4-28.5.] **26B-8-229**. Psychological autopsy examiner.

(1) With funds appropriated by the Legislature for this purpose, the department shall provide compensation, at a standard rate determined by the department, to a psychological

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- 7135 autopsy examiner. 7136 (2) The psychological autopsy examiner shall: (a) work with the medical examiner to compile data regarding suicide related deaths; 7137 (b) as relatives of the deceased are willing, gather information from relatives of the 7138 7139 deceased regarding the psychological reasons for the decedent's death; 7140 (c) maintain a database of information described in Subsections (2)(a) and (b): 7141 (d) in accordance with all applicable privacy laws subject to approval by the department, share the database described in Subsection (2)(c) with the University of Utah 7142 7143 Department of Psychiatry or other university-based departments conducting research on 7144 suicide; 7145 (e) coordinate no less than monthly with the suicide prevention coordinator described 7146 in Subsection 62A-15-1101(2); and 7147 (f) coordinate no less than quarterly with the state suicide prevention coalition. 7148 7149 [26-4-29.] 26B-8-230. Application for permit to render a dead body unavailable 7150 for postmortem examination -- Fees. 7151 (1) Upon receiving an application by a person for a permit to render a dead body 7152 unavailable for postmortem investigation, the medical examiner shall review the application 7153 to determine whether: 7154 (a) the person is authorized by law to render the dead body unavailable for 7155 postmortem investigation in the manner specified in the application; and 7156 (b) there is a need to delay any action that will render the dead body unavailable for 7157 postmortem investigation until a postmortem investigation or an autopsy of the dead body is 7158 performed by the medical examiner. 7159 (2) Except as provided in Subsection (4), within three days after receiving an 7160 application described in Subsection (1), the medical examiner shall: 7161 (a) make the determinations described in Subsection (1); and 7162 (b) (i) issue a permit to render the dead body unavailable for postmortem investigation
- 7164 (ii) deny the permit. 7165 (3) The medical examiner may deny a permit to render a dead body unavailable for

in the manner specified in the application; or

7166 postmortem investigation only if:

- 7167 (a) the applicant is not authorized by law to render the dead body unavailable for postmortem investigation in the manner specified in the application;
- 7169 (b) the medical examiner determines that there is a need to delay any action that will render the dead body unavailable for postmortem investigation; or
 - (c) the applicant fails to pay the fee described in Subsection (5).
- 7172 (4) If the medical examiner cannot in good faith make the determinations described in 7173 Subsection (1) within three days after receiving an application described in Subsection (1), 7174 the medical examiner shall notify the applicant:
- 7175 (a) that more time is needed to make the determinations described in Subsection (1); 7176 and
- 7177 (b) of the estimated amount of time needed before the determinations described in 7178 Subsection (1) can be made.
- 7179 (5) The medical examiner may charge a fee, pursuant to Section 63J-1-504, to recover the costs of fulfilling the duties of the medical examiner described in this section.

7183 [26-4-30.] 26B-8-231. Overdose fatality examiner.

- 7184 (1) Within funds appropriated by the Legislature, the department shall provide 7185 compensation, at a standard rate determined by the department, to an overdose fatality 7186 examiner.
- 7187 (2) The overdose fatality examiner shall:
- 7188 (a) work with the medical examiner to compile data regarding overdose and opioid related deaths, including:
 - (i) toxicology information;
- 7191 (ii) demographics; and

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- (iii) the source of opioids or drugs;
- 7193 (b) as relatives of the deceased are willing, gather information from relatives of the 7194 deceased regarding the circumstances of the decedent's death;
 - (c) maintain a database of information described in Subsections (2)(a) and (b);
- 7196 (d) coordinate no less than monthly with the suicide prevention coordinator described 7197 in Section 62A-15-1101; and
- (e) coordinate no less than quarterly with the Opioid and Overdose Fatality Review

7199	Committee created in Section 26-7-13.
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7201	Part 3. Revised Uniform Anatomical Gift Act
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7203	[26-28-102.] <u>26B-8-301.</u> Definitions.
7204	As used in this [chapter] <u>part</u> :
7205	(1) "Adult" means an individual who is at least 18 years of age.
7206	(2) "Agent" means an individual:
7207	(a) authorized to make health care decisions on the principal's behalf by a power of
7208	attorney for health care; or
7209	(b) expressly authorized to make an anatomical gift on the principal's behalf by any
7210	other record signed by the principal.
7211	(3) "Anatomical gift" means a donation of all or part of a human body to take effect
7212	after the donor's death for the purpose of transplantation, therapy, research, or education.
7213	(4) "Decedent" means:
7214	(a) a deceased individual whose body or part is or may be the source of an
7215	anatomical gift; and
7216	(b) includes:
7217	(i) a stillborn infant; and
7218	(ii) subject to restrictions imposed by law other than this chapter, a fetus.
7219	(5) (a) "Disinterested witness" means:
7220	(i) a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or
7221	guardian of the individual who makes, amends, revokes, or refuses to make an anatomical
7222	gift; or
7223	(ii) another adult who exhibited special care and concern for the individual.
7224	(b) "Disinterested witness" does not include a person to which an anatomical gift
7225	could pass under Section 26-28-111.
7226	(6) "Document of gift" means a donor card or other record used to make an
7227	anatomical gift. The term includes a statement or symbol on a driver license, identification
7228	card, or donor registry.
7229	(7) "Donor" means an individual whose body or part is the subject of an anatomical
7230	gift.

- 7231 (8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- 7233 (9) "Driver license" means a license or permit issued by the Driver License Division of 7234 the Department of Public Safety, to operate a vehicle, whether or not conditions are attached 7235 to the license or permit.
- (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.
- 7239 (11) "Guardian":

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- 7240 (a) means a person appointed by a court to make decisions regarding the support, 7241 care, education, health, or welfare of an individual; and
 - (b) does not include a guardian ad litem.
- 7243 (12) "Hospital" means a facility licensed as a hospital under the law of any state or a 7244 facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 7245 (13) "Identification card" means an identification card issued by the Driver License 7246 Division of the Department of Public Safety.
 - (14) "Know" means to have actual knowledge.
 - (15) "Minor" means an individual who is under 18 years of age.
- 7249 (16) "Organ procurement organization" means a person designated by the Secretary 7250 of the United States Department of Health and Human Services as an organ procurement 7251 organization.
- 7252 (17) "Parent" means a parent whose parental rights have not been terminated.
- 7253 (18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.
- 7255 (19) "Person" means an individual, corporation, business trust, estate, trust,
 7256 partnership, limited liability company, association, joint venture, public corporation,
 7257 government or governmental subdivision, agency, or instrumentality, or any other legal or
 7258 commercial entity.
- 7259 (20) "Physician" means an individual authorized to practice medicine or osteopathy 7260 under the law of any state.
- 7261 (21) "Procurement organization" means an eye bank, organ procurement 7262 organization, or tissue bank.

7263 (22) "Prospective donor":

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- (a) means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education; and
 - (b) does not include an individual who has made a refusal.
 - (23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
- 7271 (24) "Recipient" means an individual into whose body a decedent's part has been or 7272 is intended to be transplanted.
 - (25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 7275 (26) "Refusal" means a record created under Section 26-28-107 that expressly states 7276 an intent to bar other persons from making an anatomical gift of an individual's body or part.
 - (27) "Sign" means, with the present intent to authenticate or adopt a record:
 - (a) to execute or adopt a tangible symbol; or
- 7279 (b) to attach to or logically associate with the record an electronic symbol, sound, or 7280 process.
- 7281 (28) "State" means a state of the United States, the District of Columbia, Puerto Rico, 7282 the United States Virgin Islands, or any territory or insular possession subject to the 7283 jurisdiction of the United States.
- 7284 (29) "Technician":
- 7285 (a) means an individual determined to be qualified to remove or process parts by an 7286 appropriate organization that is licensed, accredited, or regulated under federal or state law; 7287 and
- 7288 (b) includes an enucleator.
- 7289 (30) "Tissue" means a portion of the human body other than an organ or an eye. The 7290 term does not include blood unless the blood is donated for the purpose of research or 7291 education.
- 7292 (31) "Tissue bank" means a person that is licensed, accredited, or regulated under 7293 federal or state law to engage in the recovery, screening, testing, processing, storage, or 7294 distribution of tissue.

7295	(32) "Transplant hospital" means a hospital that furnishes organ transplants and othe
7296	medical and surgical specialty services required for the care of transplant patients.
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7298	[26-28-103.] <u>26B-8-302.</u> Applicability.
7299	This [chapter] part applies to an anatomical gift or amendment to, revocation of, or
7300	refusal to make an anatomical gift, whenever made.
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7302	[26-28-104.] <u>26B-8-303.</u> Who may make anatomical gift before donor's death.
7303	Subject to Section 26-28-108, an anatomical gift of a donor's body or part may be
7304	made during the life of the donor for the purpose of transplantation, therapy, research, or
7305	education in the manner provided in Section 26-28-105 by:
7306	(1) the donor, if the donor is an adult or if the donor is a minor and is:
7307	(a) emancipated; or
7308	(b) authorized under state law to apply for a driver license because the donor is at
7309	least 15 years of age;
7310	(2) an agent of the donor, unless the power of attorney for health care or other record
7311	prohibits the agent from making an anatomical gift;
7312	(3) a parent of the donor, if the donor is an unemancipated minor; or
7313	(4) the donor's guardian.
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7315	[26-28-105.] <u>26B-8-304.</u> Manner of making anatomical gift before donor's
7316	death.
7317	(1) A donor may make an anatomical gift:
7318	(a) by authorizing a statement or symbol indicating that the donor has made an
7319	anatomical gift to be imprinted on the donor's driver license or identification card;
7320	(b) in a will;
7321	(c) during a terminal illness or injury of the donor, by any form of communication
7322	addressed to at least two adults, at least one of whom is a disinterested witness; or
7323	(d) as provided in Subsection (2).
7324	(2) A donor or other person authorized to make an anatomical gift under Section
7325	26-28-104 may make a gift by a donor card or other record signed by the donor or other

person making the gift or by authorizing that a statement or symbol indicating that the donor

- has made an anatomical gift be included on a donor registry. If the donor or other person is 7327 7328 physically unable to sign a record, the record may be signed by another individual at the 7329 direction of the donor or other person and shall:
 - (a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
 - (b) state that it has been signed and witnessed as provided in Subsection (2)(a).
 - (3) Revocation, suspension, expiration, or cancellation of a driver license or identification card upon which an anatomical gift is indicated does not invalidate the gift.
- 7335 (4) An anatomical gift made by will takes effect upon the donor's death whether or not 7336 the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

[26-28-106.] 26B-8-305. Amending or revoking anatomical gift before donor's 7338 7339 death.

- (1) Subject to Section 26-28-108, a donor or other person authorized to make an anatomical gift under Section 26-28-104 may amend or revoke an anatomical gift by:
 - (a) a record signed by:
- 7343 (i) the donor;

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- 7344 (ii) the other person; or
 - (iii) subject to Subsection (2), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or
 - (b) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
 - (2) A record signed pursuant to Subsection (1)(a)(iii) shall:
 - (a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
 - (b) state that it has been signed and witnessed as provided in Subsection (1)(a).
 - (3) Subject to Section 26-28-108, a donor or other person authorized to make an anatomical gift under Section 26-28-104 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.
 - (4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults,

7359 a	at least one	of whom	is a	disinterested	witness.

7360 (5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the 7361 manner provided for amendment or revocation of wills or as provided in Subsection (1).

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- [26-28-107.] 26B-8-306. Refusal to make anatomical gift -- Effect of refusal.
- 7364 (1) An individual may refuse to make an anatomical gift of the individual's body or part 7365 by:
- 7366 (a) a record signed by:
- 7367 (i) the individual; or
- 7368 (ii) subject to Subsection (2), another individual acting at the direction of the individual 7369 if the individual is physically unable to sign;
 - (b) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or
- (c) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
 - (2) A record signed pursuant to Subsection (1)(a)(ii) shall:
 - (a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and
 - (b) state that it has been signed and witnessed as provided in Subsection (1)(a).
 - (3) An individual who has made a refusal may amend or revoke the refusal:
 - (a) in the manner provided in Subsection (1) for making a refusal;
 - (b) by subsequently making an anatomical gift pursuant to Section 26-28-105 that is inconsistent with the refusal; or
 - (c) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.
 - (4) Except as otherwise provided in Subsection 26-28-108(8), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

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[26-28-108.] <u>26B-8-307.</u> Preclusive effect of anatomical gift, amendment, or

revocation.

- (1) Except as otherwise provided in Subsection (7) and subject to Subsection (6), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 26-28-105 or an amendment to an anatomical gift of the donor's body or part under Section 26-28-106.
- (2) A donor's revocation of an anatomical gift of the donor's body or part under Section 26-28-106 is not a refusal and does not bar another person specified in Section 26-28-104 or 26-28-109 from making an anatomical gift of the donor's body or part under Section 26-28-105 or 26-28-110.
- (3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 26-28-105 or an amendment to an anatomical gift of the donor's body or part under Section 26-28-106, another person may not make, amend, or revoke the gift of the donor's body or part under Section 26-28-110.
- (4) A revocation of an anatomical gift of a donor's body or part under Section 26-28-106 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 26-28-105 or 26-28-110.
- (5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 26-28-104, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.
- (6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 26-28-104, an anatomical gift of a part for one or more of the purposes set forth in Section 26-28-104 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 26-28-105 or 26-28-110.
- (7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.
- (8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

[26-28-109.] <u>26B-8-308.</u> Who may make anatomical gift of decedent's body or

7423	part.				
7424	(1) Subject to Subsections (2) and (3) and unless barred by Section 26-28-107 or				
7425	26-28-108, an anatomical gift of a decedent's body or part for purpose of transplantation,				
7426	therapy, research, or education may be made by any member of the following classes of				
7427	persons who is reasonably available, in the order of priority listed:				
7428	(a) an agent of the decedent at the time of death who could have made an				
7429	anatomical gift under Subsection 26-28-104(2) immediately before the decedent's death;				
7430	(b) the spouse of the decedent;				
7431	(c) adult children of the decedent;				
7432	(d) parents of the decedent;				
7433	(e) adult siblings of the decedent;				
7434	(f) adult grandchildren of the decedent;				
7435	(g) grandparents of the decedent;				
7436	(h) the persons who were acting as the guardians of the person of the decedent at				
7437	the time of death;				
7438	(i) an adult who exhibited special care and concern for the decedent; and				
7439	(j) any other person having the authority to dispose of the decedent's body.				
7440	(2) If there is more than one member of a class listed in Subsection (1)(a), (c), (d), (e),				
7441	(f), (g), or (j) entitled to make an anatomical gift, an anatomical gift may be made by a				
7442	member of the class unless that member or a person to which the gift may pass under				
7443	Section 26-28-111 knows of an objection by another member of the class. If an objection is				
7444	known, the gift may be made only by a majority of the members of the class who are				
7445	reasonably available.				
7446	(3) A person may not make an anatomical gift if, at the time of the decedent's death,				
7447	a person in a prior class under Subsection (1) is reasonably available to make or to object to				
7448	the making of an anatomical gift.				
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7450	[26-28-110.] <u>26B-8-309.</u> Manner of making, amending, or revoking anatomical				
7451	gift of decedent's body or part.				
7452	(1) A person authorized to make an anatomical gift under Section 26-28-109 may				
7453	make an anatomical gift by a document of gift signed by the person making the gift or by that				

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person's oral communication that is electronically recorded or is contemporaneously reduced

7455 to a record and signed by the individual receiving the oral communication.

- (2) Subject to Subsection (3), an anatomical gift by a person authorized under Section 26-28-109 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 26-28-109 may be:
 - (a) amended only if a majority of the reasonably available members agree to the amending of the gift; or
 - (b) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.
 - (3) A revocation under Subsection (2) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

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[26-28-111.] <u>26B-8-310.</u> Persons that may receive anatomical gift -- Purpose of anatomical gift.

- (1) An anatomical gift may be made to the following persons named in the document of gift:
- (a) a hospital, accredited medical school, dental school, college, university, organ procurement organization, or other appropriate person, for research or education;
- (b) subject to Subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or
 - (c) an eye bank or tissue bank.
- (2) If an anatomical gift to an individual under Subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with Subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.
- (3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in Subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:
- (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.
 - (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the

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- 7488 (c) If the part is an organ and the gift is for the purpose of transplantation or therapy, 7489 the gift passes to the appropriate organ procurement organization as custodian of the organ.
 - (d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.
 - (4) For the purpose of Subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.
 - (5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (7).
 - (6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (7).
 - (7) For purposes of Subsections (2), (5), and (7) the following rules apply:
 - (a) If the part is an eye, the gift passes to the appropriate eye bank.
 - (b) If the part is tissue, the gift passes to the appropriate tissue bank.
 - (c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.
 - (8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under Subsection (1)(b), passes to the organ procurement organization as custodian of the organ.
 - (9) If an anatomical gift does not pass pursuant to Subsections (2) through (8) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.
 - (10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 26-28-105 or 26-28-110 or if the person knows that the decedent made a refusal under Section 26-28-107 that was not revoked. For purposes of

this Subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in Subsection (1)(b), nothing in this chapter affects the allocation of organs for transplantation or therapy.

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[26-28-112.] 26B-8-311. Search and notification.

- (1) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:
- (a) a law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual;
- (b) if no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital; and
- (c) a law enforcement officer, firefighter, emergency medical services provider, or other emergency rescuer who finds an individual who is deceased at the scene of a motor vehicle accident, when the deceased individual is transported from the scene of the accident to a funeral establishment licensed under Title 58, Chapter 9, Funeral Services Licensing Act:
- (i) the law enforcement officer, firefighter, emergency medical services provider, or other emergency rescuer shall as soon as reasonably possible, notify the appropriate organ procurement organization, tissue bank, or eye bank of:
 - (A) the identity of the deceased individual, if known;
- (B) information, if known, pertaining to the deceased individual's legal next-of-kin in accordance with Section 26-28-109; and
- (C) the name and location of the funeral establishment which received custody of and transported the deceased individual; and
- (ii) the funeral establishment receiving custody of the deceased individual under this Subsection (1)(c) may not embalm the body of the deceased individual until:
- 7548 (A) the funeral establishment receives notice from the organ procurement
 7549 organization, tissue bank, or eye bank that the readily available persons listed as having
 7550 priority in Section 26-28-109 have been informed by the organ procurement organization of

- the option to make or refuse to make an anatomical gift in accordance with Section
 26-28-104, with reasonable discretion and sensitivity appropriate to the circumstances of the
 family;
- 7554 (B) in accordance with federal law, prior approval for embalming has been obtained 7555 from a family member or other authorized person; and
 - (C) the period of time in which embalming is prohibited under Subsection (1)(c)(ii) may not exceed 24 hours after death.
 - (2) If a document of gift or a refusal to make an anatomical gift is located by the search required by Subsection (1)(a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.
- 7562 (3) A person is not subject to criminal or civil liability for failing to discharge the duties 7563 imposed by this section but may be subject to administrative sanctions.

[26-28-113.] <u>26B-8-312.</u> Delivery of document of gift not required -- Right to examine.

- (1) A document of gift need not be delivered during the donor's lifetime to be effective.
- (2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 26-28-111.

[26-28-114.] <u>26B-8-313.</u> Rights and duties of procurement organization and others.

- (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.
- (2) A procurement organization shall be allowed reasonable access to information in

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the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

- (3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.
- (4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 26-28-111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.
- (5) Unless prohibited by law other than this chapter, an examination under Subsection (3) or (4) may include an examination of all medical and dental records of the donor or prospective donor.
- (6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.
- (7) Upon referral by a hospital under Subsection (1), a procurement organization shall make a reasonable search for any person listed in Section 26-28-109 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.
- (8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person to which a part passes under Section 26-28-111 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation,

shall cause the part to be removed without unnecessary mutilation.

- (9) Neither the physician or physician assistant who attends the decedent at death nor the physician or physician assistant who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.
- (10) A physician, physician assistant, or technician may remove a donated part from the body of a donor that the physician, physician assistant, or technician is qualified to remove.

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[26-28-115.] <u>26B-8-314.</u> Coordination of procurement and use.

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

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[26-28-116.] <u>26B-8-315.</u> Sale or purchase of parts prohibited.

- (1) Except as otherwise provided in Subsection (2), a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a third degree felony.
- (2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

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[26-28-117.] <u>26B-8-316.</u> Other prohibited acts.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment, or revocation of a document of gift, or a refusal commits a third degree felony.

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[26-28-118.] <u>26B-8-317.</u> Immunity.

- (1) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.
- (2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.
 - (3) In determining whether an anatomical gift has been made, amended, or revoked

7647	under this chapter, a person may rely upon representations of an individual listed in
7648	Subsection 26-28-109(1)(b), (c), (d), (e), (f), (g), (h), (i), or (j) relating to the individual's
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[26-28-119.] <u>26B-8-318.</u> Law governing validity -- Choice of law as to execution of document of gift -- Presumption of validity.

- (1) A document of gift is valid if executed in accordance with:
- 7655 (a) this chapter;
 - (b) the laws of the state or country where it was executed; or
- 7657 (c) the laws of the state or country where the person making the anatomical gift was
 7658 domiciled, has a place of residence, or was a national at the time the document of gift was
 7659 executed.
 - (2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.
 - (3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

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[26-28-120.] <u>26B-8-319.</u> Donor registry.

- (1) The Department of Public Safety may establish or contract for the establishment of a donor registry.
- (2) The Driver License Division of the Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.
 - (3) A donor registry shall:
- (a) allow a donor or other person authorized under Section 26-28-104 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;
- (b) be accessible to a procurement organization to allow it to obtain relevant
 information on the donor registry to determine, at or near death of the donor or a prospective
 donor, whether the donor or prospective donor has made, amended, or revoked an

anatomical gift; and 7679

- (c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a 7680 7681 24-hour basis.
 - (4) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.
 - (5) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry shall comply with Subsections (3) and (4).

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[26-28-121.] 26B-8-320. Effect of anatomical gift on advance health care directive.

- (1) As used in this section:
- (a) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.
- (b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.
- (c) "Health care decision" means any decision regarding the health care of the prospective donor.
- (2) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or if no declaration or directive exists or the agent is not reasonably available, another person authorized by a law other than this chapter to make a health care decision on behalf of the prospective donor, shall act for the donor to resolve the

conflict. The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 26-28-109. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end of life care.

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[26-28-122.] <u>26B-8-321.</u> Cooperation between medical examiner and procurement organization.

- (1) A medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.
- (2) If a medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is going to be performed, unless the medical examiner denies recovery in accordance with Section 26-28-123, the medical examiner or designee shall conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.
- (3) A part may not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This Subsection (3) does not preclude a medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the medical examiner.

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[26-28-123.] 26B-8-322. Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.

(1) Upon request of a procurement organization, a medical examiner shall release to the procurement organization the name, contact information, and available medical and

social history of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

- (2) The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner which the medical examiner determines may be relevant to the investigation.
- (3) A person that has any information requested by a medical examiner pursuant to Subsection (2) shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.
- (4) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is not required, or the medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.
- (5) If an anatomical gift of a part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the medical examiner may allow the recovery.
- (6) Following the consultation under Subsection (5), in the absence of mutually agreed upon protocols to resolve conflict between the medical examiner and the procurement organization, if the medical examiner intends to deny recovery, the medical examiner or designee, at the request of the procurement organization, may attend the

removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the medical examiner or designee may allow recovery by the procurement organization to proceed, or, if the medical examiner or designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

- (7) If the medical examiner or designee denies recovery under Subsection (6), the medical examiner or designee shall:
 - (a) explain in a record the specific reasons for not allowing recovery of the part;
 - (b) include the specific reasons in the records of the medical examiner; and
 - (c) provide a record with the specific reasons to the procurement organization.
- (8) If the medical examiner or designee allows recovery of a part under Subsection (4), (5), or (6), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the medical examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.
- (9) If a medical examiner or designee is required to be present at a removal procedure under Subsection (6), upon request the procurement organization requesting the recovery of the part shall reimburse the medical examiner or designee for the additional costs incurred in complying with Subsection (6).

[26-28-124.] <u>26B-8-323.</u> Uniformity of application and construction.

In applying and construing [this] the uniform act in this part, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[26-28-125.] <u>26B-8-324.</u> Relation to Electronic Signatures in Global and National Commerce Act.

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

7807	Part 4. Health Statistics.
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7809	[26-3-1.] <u>26B-8-401.</u> Definitions.
7810	As used in this [chapter] <u>part</u> :
7811	(1) "Disclosure" [or "disclose"] means the communication of health data to any
7812	individual or organization outside the department.
7813	(2) "Health data" means any information, except vital records as defined in Section
7814	[26-2-2] <u>26B-8-101</u> , relating to the health status of individuals, the availability of health
7815	resources and services, and the use and cost of these resources and services.
7816	(3) "Identifiable health data" means any item, collection, or grouping of health data
7817	which makes the individual supplying it or described in it identifiable.
7818	(4) "Individual" means a natural person.
7819	(5) "Organization" means any corporation, association, partnership, agency,
7820	department, unit, or other legally constituted institution or entity, or part of any of these.
7821	(6) "Research and statistical purposes" means the performance of activities relating to
7822	health data, including:
7823	(a) describing the group characteristics of individuals or organizations;
7824	(b) analyzing the interrelationships among the various characteristics of individuals or
7825	organizations;
7826	(c) the conduct of statistical procedures or studies to improve the quality of health
7827	data;
7828	(d) the design of sample surveys and the selection of samples of individuals or
7829	organizations;
7830	(e) the preparation and publication of reports describing these matters; and
7831	(f) other related functions.
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7833	[26-3-2.] <u>26B-8-402.</u> Powers of department to collect and maintain health data.
7834	The department may on a voluntary basis, except when there is specific legal authority
7835	to compel reporting of health data:
7836	(1) collect and maintain health data on:
7837	(a) the extent, nature, and impact of illness and disability on the population of the
7838	state ⁻

- 7839 (b) the determinants of health and health hazards;
- (c) health resources, including the extent of available manpower and resources;
- 7841 (d) utilization of health care;
- (e) health care costs and financing; or
- 7843 (f) other health or health-related matters;
- 7844 (2) undertake and support research, demonstrations, and evaluations respecting new 7845 or improved methods for obtaining current data on the matters referred to in Subsection (1) 7846 of this section:
- 7847 (3) collect health data under other authorities and on behalf of other governmental or not-for-profit organizations.

7850 [26-3-4.] 26B-8-403. Quality and publication of statistics.

The department shall:

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- 7852 (1) take such actions as may be necessary to assure that statistics developed under 7853 this [chapter] part are of high quality, timely, and comprehensive, as well as specific, 7854 standardized, and adequately analyzed and indexed; and
- 7855 (2) publish, make available, and disseminate such statistics on as wide a basis as 7856 practicable.

[26-3-5.] 26B-8-404. Coordination of health data collection activities.

- (1) The department shall coordinate health data activities within the state to eliminate unnecessary duplication of data collection and maximize the usefulness of data collected.
- (2) Except as specifically provided, this [chapter] part does not independently provide authority for the department to compel the reporting of information.

[26-3-6.] <u>26B-8-405.</u> Uniform standards -- Powers of department.

The department may:

- (1) participate and cooperate with state, local, and federal agencies and other organizations in the design and implementation of uniform standards for the management of health information at the federal, state, and local levels; and
- 7869 (2) undertake and support research, development, demonstrations, and evaluations that support uniform health information standards.

- 7871 [26-3-7.] 26B-8-406. Disclosure of health data -- Limitations.
- 7872 The department may not [disclose] make a disclosure of any identifiable health data 7873 unless:
- 7874 (1) one of the following persons has consented to the disclosure:
- 7875 (a) the individual;

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- 7876 (b) the next-of-kin if the individual is deceased;
- 7877 (c) the parent or legal quardian if the individual is a minor or mentally incompetent; or
- 7878 (d) a person holding a power of attorney covering such matters on behalf of the 7879 individual;
- 7880 (2) the disclosure is to a governmental entity in this or another state or the federal 7881 government, provided that:
 - (a) the data will be used for a purpose for which they were collected by the department; and
 - (b) the recipient enters into a written agreement satisfactory to the department agreeing to protect such data in accordance with the requirements of this [chapter] part and department rule and not permit further disclosure without prior approval of the department:
 - (3) the disclosure is to an individual or organization, for a specified period, solely for bona fide research and statistical purposes, determined in accordance with department rules, and the department determines that the data are required for the research and statistical purposes proposed and the requesting individual or organization enters into a written agreement satisfactory to the department to protect the data in accordance with this [chapter] part and department rule and not permit further disclosure without prior approval of the department;
 - (4) the disclosure is to a governmental entity for the purpose of conducting an audit, evaluation, or investigation of the department and such governmental entity agrees not to use those data for making any determination affecting the rights, benefits, or entitlements of any individual to whom the health data relates;
 - (5) the disclosure is of specific medical or epidemiological information to authorized personnel within the department, local health departments, public health authorities, official health agencies in other states, the United States Public Health Service, the Centers for Disease Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary to continue patient services or to undertake public health efforts to control

communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous or important or that may affect the public health;

- (6) (a) the disclosure is of specific medical or epidemiological information to a "health care provider" as defined in Section 78B-3-403, health care personnel, or public health personnel who has a legitimate need to have access to the information in order to assist the patient or to protect the health of others closely associated with the patient; and
 - (b) this Subsection (6) does not create a duty to warn third parties;
- (7) the disclosure is necessary to obtain payment from an insurer or other third-party payor in order for the department to obtain payment or to coordinate benefits for a patient; or
 - (8) the disclosure is to the subject of the identifiable health data.

7914 [26-3-8.] 26B-8-407. Disclosure of health data -- Discretion of department.

- (1) Any disclosure provided for in Section 26-3-7 shall be made at the discretion of the department[, except that the] .
- 7917 (2) Notwithstanding Subsection (1), the disclosure provided for in Subsection 7918 [26-3-7] 26B-8-206 (4) shall be made when the requirements of that paragraph are met.

[26-3-9.] 26B-8-408. Health data not subject to subpoena or compulsory process -- Exception.

Identifiable health data obtained in the course of activities undertaken or supported under this [chapter] part may not be subject to discovery, subpoena, or similar compulsory process in any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual or organization with lawful access to identifiable health data under the provisions of this [chapter] part be compelled to testify with regard to such health data, except that data pertaining to a party in litigation may be subject to subpoena or similar compulsory process in an action brought by or on behalf of such individual to enforce any liability arising under this [chapter] part.

[26-3-10.] 26B-8-409. Department measures to protect security of health data.

The department shall protect the security of identifiable health data by use of the following measures and any other measures adopted by rule:

(1) limit access to identifiable health data to authorized individuals who have received

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7935	training in the handling of such data;
7936	(2) designate a person to be responsible for physical security;
7937	(3) develop and implement a system for monitoring security; and
7938	(4) review periodically all identifiable health data to determine whether identifying
7939	characteristics should be removed from the data.
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7941	[26-3-11.] <u>26B-8-410.</u> Relation to other [chapters] <u>provisions</u> .
7942	Because [Chapter 2, Utah Vital Statistics Act, Chapter 4, Utah Medical Examiner Act,
7943	Chapter 6, Utah Communicable Disease Control Act, and Chapter 33a, Utah Health Data
7944	Authority Act] the following parts contain specific provisions regarding collection and
7945	disclosure of data, the provisions of this chapter do not apply to data subject to those
7946	chapters[.] <u>:</u>
7947	(1) Chapter 8, Part 1, Vital Statistics;
7948	(2) Chapter 1, Part X, Utah Medical Examiner; and
7949	(3) Chapter 6, Part 5, Utah Health Data Authority.
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7951	[26-1-37.] <u>26B-8-411.</u> Duty to establish standards for the electronic
7952	exchange of clinical health information Immunity.
7953	(1) [For purposes of] As used in this section:
7954	(a) "Affiliate" means an organization that directly or indirectly through one or more
7955	intermediaries controls, is controlled by, or is under common control with another
7956	organization.
7957	(b) "Clinical health information" shall be defined by the department by administrative
7958	rule adopted in accordance with Subsection (2).
7959	(c) "Electronic exchange":
7960	(i) includes:
7961	(A) the electronic transmission of clinical health data via Internet or extranet; and
7962	(B) physically moving clinical health information from one location to another using
7963	magnetic tape, disk, or compact disc media; and
7964	(ii) does not include exchange of information by telephone or fax.
7965	(d) "Health care provider" means a licensing classification that is either:
7966	(i) licensed under Title 58, Occupations and Professions, to provide health care; or

- 7967 (ii) licensed under [Chapter 21] Chapter 2, Part 2, Health Care Facility Licensing and 7968 Inspection [Act].
 - (e) "Health care system" shall include:
- 7970 (i) affiliated health care providers;
- 7971 (ii) affiliated third party payers; and
- 7972 (iii) other arrangement between organizations or providers as described by the 7973 department by administrative rule.
- 7974 (f) "Qualified network" means an entity that:
- 7975 (i) is a non-profit organization;
- 7976 (ii) is accredited by the Electronic Healthcare Network Accreditation Commission, or 7977 another national accrediting organization recognized by the department; and
- (iii) performs the electronic exchange of clinical health information among multiple health care providers not under common control, multiple third party payers not under common control, the department, and local health departments.
- 7981 (g) "Third party payer" means:
 - (i) all insurers offering health insurance who are subject to Section 31A-22-614.5; and
- 7983 (ii) the state Medicaid program.
- 7984 (2) (a) [In addition to the duties listed in Section 26-1-30, the] The department shall,
- 7985 <u>make rules</u> in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act _,
- 7986 <u>to</u>:

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- 7987 (i) define:
- 7988 (A) "clinical health information" subject to this section; and
- 7989 (B) "health system arrangements between providers or organizations" as described in 7990 Subsection (1)(e)(iii); and
- (ii) adopt standards for the electronic exchange of clinical health information between health care providers and third party payers that are for treatment, payment, health care operations, or public health reporting, as provided for in 45 C.F.R. Parts 160, 162, and 164, Health Insurance Reform: Security Standards.
- 7995 (b) The department shall coordinate its rule making authority under the provisions of 7996 this section with the rule making authority of the Insurance Department under Section 7997 31A-22-614.5.
- 7998 (c) The department shall establish procedures for developing the rules adopted under

this section, which ensure that the Insurance Department is given the opportunity to comment on proposed rules.

- (3) (a) Except as provided in Subsection (3)(e), a health care provider or third party payer in Utah is required to use the standards adopted by the department under the provisions of Subsection (2) if the health care provider or third party payer elects to engage in an electronic exchange of clinical health information with another health care provider or third party payer.
- (b) A health care provider or third party payer may [disclose] make a disclosure of information to the department or a local health department, by electronic exchange of clinical health information, as permitted by Subsection 45 C.F.R. Sec. 164.512(b).
- (c) When functioning in its capacity as a health care provider or payer, the department or a local health department may [disclose] make a disclosure of clinical health information by electronic exchange to another health care provider or third party payer.
- (d) An electronic exchange of clinical health information by a health care provider, a third party payer, the department, a local health department, or a qualified network is a disclosure for treatment, payment, or health care operations if it complies with Subsection (3)(a) or (c) and is for treatment, payment, or health care operations, as those terms are defined in 45 C.F.R. Parts 160, 162, and 164.
- (e) A health care provider or third party payer is not required to use the standards adopted by the department under the provisions of Subsection (2) if the health care provider or third party payer engage in the electronic exchange of clinical health information within a particular health care system.
- (4) Nothing in this section shall limit the number of networks eligible to engage in the electronic data interchange of clinical health information using the standards adopted by the department under Subsection (2)(a)(ii).
- (5) (a) The department, a local health department, a health care provider, a third party payer, or a qualified network is not subject to civil liability for a disclosure of clinical health information if the disclosure is in accordance with:
 - (i) Subsection (3)(a); and
 - (ii) Subsection (3)(b), (c), or (d).
- 8029 (b) The department, a local health department, a health care provider, a third party 8030 payer, or a qualified network that accesses or reviews clinical health information from or

through the electronic exchange in accordance with the requirements in this section is not subject to civil liability for the access or review.

(6) Within a qualified network, information generated or [disclosed] for which a disclosure is made in the electronic exchange of clinical health information is not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

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Part 5. Utah Health Data Authority.

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- [26-33a-102.] 26B-8-501. Definitions.
- 8040 As used in this [chapter] part:
 - (1) "Committee" means the Health Data Committee created [by Section 26B-1-204] in Section 26B-1-4XX.
 - (2) "Control number" means a number assigned by the committee to an individual's health data as an identifier so that the health data can be disclosed or used in research and statistical analysis without readily identifying the individual.
 - (3) "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payor, health maintenance organization, or government department which could reasonably be expected to provide health data under this [chapter] part.
 - (4) "Disclosure" or "disclose" means the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.
 - (5) (a) "Health care facility" means a facility that is licensed by the department under [Title 26, Chapter 21] Chapter 2, Part 2, Health Care Facility Licensing and Inspection [Act].
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee, with the concurrence of the department, may by rule add, delete, or modify the list of facilities that come within this definition for purposes of this [chapter] part.
 - (6) "Health care provider" means [any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech pathologist, certified social worker, social service worker, social service

aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar
care and services relating to or arising out of the health needs of persons or groups of
persons, and officers, employees, or agents of any of the above acting in the course and
scope of their employment.] the same as that term is defined in Section 78B-3-403.

- (7) "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer, except vital records as defined in Section [26-2-2] 26B-8-101 shall be excluded.
- (8) "Health maintenance organization" [has the meaning set forth] means the same as that term is defined in Section 31A-8-101.
- (9) "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.
- (10) "Organization" means any corporation, association, partnership, agency, department, unit, or other legally constituted institution or entity, or part thereof.
- 8077 (11) "Research and statistical analysis" means activities using health data analysis 8078 including:
 - (a) describing the group characteristics of individuals or organizations;
 - (b) analyzing the noncompliance among the various characteristics of individuals or organizations;
 - (c) conducting statistical procedures or studies to improve the quality of health data;
 - (d) designing sample surveys and selecting samples of individuals or organizations; and
 - (e) preparing and publishing reports describing these matters.
 - (12) "Self-funded employer" means an employer who provides for the payment of health care services for employees directly from the employer's funds, thereby assuming the financial risks rather than passing them on to an outside insurer through premium payments.
- 8089 (13) "Plan" means the plan developed and adopted by the Health Data Committee under Section [26-33a-104] <u>26B-1-XXX</u>.
 - (14) "Third party payor" means:
 - (a) an insurer offering a health benefit plan, as defined by Section 31A-1-301, to at least 2,500 enrollees in the state;
 - (b) a nonprofit health service insurance corporation licensed under Title 31A, Chapter

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- (c) a program funded or administered by Utah for the provision of health care
 services, including the Medicaid and medical assistance programs described in Chapter 18,
 Medical Assistance Act; and
 - (d) a corporation, organization, association, entity, or person:
- 8100 (i) which administers or offers a health benefit plan to at least 2,500 enrollees in the 8101 state; and
- 8102 (ii) which is required by administrative rule adopted by the department in accordance 8103 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to supply health data to the 8104 committee.

[26-33a-105.] <u>26B-8-502.</u> Executive secretary -- Appointment -- Powers.

- (1) An executive secretary shall be appointed by the executive director, with the approval of the committee, and shall serve under the administrative direction of the executive director.
 - (2) The executive secretary shall:
 - (a) employ full-time employees necessary to carry out this [chapter] part;
- 8112 (b) supervise the development of a draft health data plan for the committee's review, 8113 modification, and approval; and
 - (c) supervise and conduct the staff functions of the committee in order to assist the committee in meeting its responsibilities under this [chapter] part.

[26-33a-106.] <u>26B-8-503.</u> Limitations on use of health data.

The committee may not use the health data provided to it by third-party payors, health care providers, or health care facilities to make recommendations with regard to a single health care provider or health care facility, or a group of health care providers or health care facilities.

- 8123 [26-33a-106.1.] <u>26B-8-504.</u> Health care cost and reimbursement data.
- 8124 (1) The committee shall, as funding is available:
- 8125 (a) establish a plan for collecting data from data suppliers to determine 8126 measurements of cost and reimbursements for risk-adjusted episodes of health care;

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	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
8127	(b) share data regarding insurance claims and an individual's and small employer
8128	group's health risk factor and characteristics of insurance arrangements that affect claims
8129	and usage with the Insurance Department, only to the extent necessary for:
8130	(i) risk adjusting; and
8131	(ii) the review and analysis of health insurers' premiums and rate filings; and
8132	(c) assist the Legislature and the public with awareness of, and the promotion of,
8133	transparency in the health care market by reporting on:
8134	(i) geographic variances in medical care and costs as demonstrated by data available
8135	to the committee; and
8136	(ii) rate and price increases by health care providers:
8137	(A) that exceed the Consumer Price Index - Medical as provided by the United States
8138	Bureau of Labor Statistics;
8139	(B) as calculated yearly from June to June; and
8140	(C) as demonstrated by data available to the committee;
8141	(d) provide on at least a monthly basis, enrollment data collected by the committee to
8142	a not-for-profit, broad-based coalition of state health care insurers and health care providers
8143	that are involved in the standardized electronic exchange of health data as described in
8144	Section 31A-22-614.5, to the extent necessary:
8145	(i) for the department or the Medicaid Office of the Inspector General to determine
8146	insurance enrollment of an individual for the purpose of determining Medicaid third party
8147	liability;
8148	(ii) for an insurer that is a data supplier, to determine insurance enrollment of an
8149	individual for the purpose of coordination of health care benefits; and
8150	(iii) for a health care provider, to determine insurance enrollment for a patient for the
8151	purpose of claims submission by the health care provider;
8152	(e) coordinate with the State Emergency Medical Services Committee to publish data
8153	regarding air ambulance charges under Section [26-8a-203] <u>26B-1-XXX</u> ;
8154	(f) share data collected under this [chapter] part with the state auditor for use in the
8155	health care price transparency tool described in Section 67-3-11; and
8156	(g) publish annually a report on primary care spending within Utah.

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(2) (a) The Medicaid Office of Inspector General shall annually report to the

Legislature's Health and Human Services Interim Committee regarding how the office used

the data obtained under Subsection (1)(d)(i) and the results of obtaining the data. 8159 8160 (b) A data supplier is not liable for a breach of or unlawful disclosure of the data caused by an entity that obtains data in accordance with Subsection (1). 8161 8162 (3) The plan adopted under Subsection (1) shall include: 8163 (a) the type of data that will be collected; 8164 (b) how the data will be evaluated: 8165 (c) how the data will be used; 8166 (d) the extent to which, and how the data will be protected; and 8167 (e) who will have access to the data. 8168 8169 [26-33a-106.5.] 26B-8-505. Comparative analyses. 8170 (1) The committee may publish compilations or reports that compare and identify 8171 health care providers or data suppliers from the data it collects under this [chapter] part or 8172 from any other source. (2) (a) Except as provided in Subsection (7)(c), the committee shall publish 8173 8174 compilations or reports from the data it collects under this [chapter] part or from any other 8175 source which: 8176 (i) contain the information described in Subsection (2)(b); and 8177 (ii) compare and identify by name at least a majority of the health care facilities, 8178 health care plans, and institutions in the state. 8179 (b) Except as provided in Subsection (7)(c), the report required by this Subsection (2) 8180 shall: 8181 (i) be published at least annually; 8182 (ii) list, as determined by the committee, the median paid amount for at least the top 8183 50 medical procedures performed in the state by volume: 8184 (iii) describe the methodology approved by the committee to determine the amounts 8185 described in Subsection (2)(b)(ii); and (iv) contain comparisons based on at least the following factors: 8186 8187 (A) nationally or other generally recognized quality standards; 8188 (B) charges; and

(3) (a) The committee may contract with a private, independent analyst to evaluate

(C) nationally recognized patient safety standards.

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8191 the standard comparative reports of the committee that identify, compare, or rank the 8192 performance of data suppliers by name.

- (b) The evaluation described in this Subsection (3) shall include a validation of statistical methodologies, limitations, appropriateness of use, and comparisons using standard health services research practice.
- (c) The independent analyst described in Subsection (3)(a) shall be experienced in analyzing large databases from multiple data suppliers and in evaluating health care issues of cost, quality, and access.
- (d) The results of the analyst's evaluation shall be released to the public before the standard comparative analysis upon which it is based may be published by the committee.
- (4) [In] The committee, with the concurrence of the department, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, [the committee, with the concurrence of the department, shall adopt by rule] to adopt a timetable for the collection and analysis of data from multiple types of data suppliers.
- (5) The comparative analysis required under Subsection (2) shall be available free of charge and easily accessible to the public.
- (6) (a) The department shall include in the report required by Subsection (2)(b), or include in a separate report, comparative information on commonly recognized or generally agreed upon measures of cost and quality identified in accordance with Subsection (7), for:
 - (i) routine and preventive care; and

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- (ii) the treatment of diabetes, heart disease, and other illnesses or conditions as determined by the committee.
- (b) The comparative information required by Subsection (6)(a) shall be based on data collected under Subsection (2) and clinical data that may be available to the committee, and shall compare:
 - (i) results for health care facilities or institutions;
 - (ii) results for health care providers by geographic regions of the state;
- (iii) a clinic's aggregate results for a physician who practices at a clinic with five or 8218 8219 more physicians; and
- 8220 (iv) a geographic region's aggregate results for a physician who practices at a clinic 8221 with less than five physicians, unless the physician requests physician-level data to be 8222 published on a clinic level.

8223	(c) The department:
8224	(i) may publish information required by this Subsection (6) directly or through one or
8225	more nonprofit, community-based health data organizations; and
8226	(ii) may use a private, independent analyst under Subsection (3)(a) in preparing the
8227	report required by this section.
8228	(d) A report published by the department under this Subsection (6):
8229	(i) is subject to the requirements of Section [26-33a-107] 26B-8-306; and
8230	(ii) shall, prior to being published by the department, be submitted to a neutral,
8231	non-biased entity with a broad base of support from health care payers and health care
8232	providers in accordance with Subsection (7) for the purpose of validating the report.
8233	(7) (a) The Health Data Committee shall, through the department, for purposes of
8234	Subsection (6)(a), use the quality measures that are developed and agreed upon by a
8235	neutral, non-biased entity with a broad base of support from health care payers and health
8236	care providers.
8237	(b) If the entity described in Subsection (7)(a) does not submit the quality measures,
8238	the department may select the appropriate number of quality measures for purposes of the
8239	report required by Subsection (6).
8240	(c) (i) For purposes of the reports published on or after July 1, 2014, the department
8241	may not compare individual facilities or clinics as described in Subsections (6)(b)(i) through
8242	(iv) if the department determines that the data available to the department can not be
8243	appropriately validated, does not represent nationally recognized measures, does not reflect
8244	the mix of cases seen at a clinic or facility, or is not sufficient for the purposes of comparing
8245	providers.
8246	(ii) The department shall report to the Legislature's Health and Human Services
8247	Interim Committee prior to making a determination not to publish a report under Subsection
8248	(7)(c)(i).
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8250	[26-33a-107.] <u>26B-8-506.</u> Limitations on release of reports.
8251	The committee may not release a compilation or report that compares and identifies
8252	health care providers or data suppliers unless it:

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information submitted to the committee and submit to the committee any corrections of errors

(1) allows the data supplier and the health care provider to verify the accuracy of the

- with supporting evidence and comments within a reasonable period of time to be established by rule, with the concurrence of the department, made in accordance with Title 63G,
- 8257 Chapter 3, Utah Administrative Rulemaking Act;
- 8258 (2) corrects data found to be in error; and
- 8259 (3) allows the data supplier a reasonable amount of time prior to publication to review 8260 the committee's interpretation of the data and prepare a response.

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- [26-33a-108.] <u>26B-8-507.</u> Disclosure of identifiable health data prohibited.
- 8263 (1) (a) All information, reports, statements, memoranda, or other data received by the committee are strictly confidential.
- 8265 (b) Any use, release, or publication of the information shall be done in such a way
 8266 that no person is identifiable except as provided in Sections [26-33a-107] <u>26B-6-306</u> and
 8267 [26-33a-109] <u>26B-6-308</u>.
 - (2) No member of the committee may be held civilly liable by reason of having released or published reports or compilations of data supplied to the committee, so long as the publication or release is in accordance with the requirements of Subsection (1).
- 8271 (3) No person, corporation, or entity may be held civilly liable for having provided data 8272 to the committee in accordance with this [chapter] part.

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- [26-33a-109.] <u>26B-8-508.</u> Exceptions to prohibition on disclosure of identifiable health data.
- (1) The committee may not disclose any identifiable health data unless:
 - (a) the individual has authorized the disclosure;
- 8278 (b) the disclosure is to the department or a public health authority in accordance with 8279 Subsection (2); or
 - (c) the disclosure complies with the provisions of:
- 8281 (i) Subsection (3);
- 8282 (ii) insurance enrollment and coordination of benefits under Subsection
- 8283 [26-33a-106.1] **26B-8-304** (1)(d); or
- 8284 (iii) risk adjusting under Subsection [26-33a-106.1] <u>26B-8-304</u> (1)(b).
- 8285 (2) The committee may disclose identifiable health data to the department or a public 8286 health authority under Subsection (1)(b) if:

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	WORKING DRAFT FOR DISCUSSION FOR POSES ONLY
8287	(a) the department or the public health authority has clear statutory authority to
8288	possess the identifiable health data; and
8289	(b) the disclosure is solely for use:
8290	(i) in the Utah Statewide Immunization Information System operated by the
8291	department;
8292	(ii) in the Utah Cancer Registry operated by the University of Utah, in collaboration
8293	with the department; or
8294	(iii) by the medical examiner, as defined in Section [26-4-2] <u>26B-X-XXX</u> , or the
8295	medical examiner's designee.
8296	(3) The committee shall consider the following when responding to a request for
8297	disclosure of information that may include identifiable health data:
8298	(a) whether the request comes from a person after that person has received approval
8299	to do the specific research or statistical work from an institutional review board; and
8300	(b) whether the requesting entity complies with the provisions of Subsection (4).
8301	(4) A request for disclosure of information that may include identifiable health data
8302	shall:
8303	(a) be for a specified period; or
8304	(b) be solely for bona fide research or statistical purposes as determined in
8305	accordance with administrative rules adopted by the department in accordance with Title
8306	63G, Chapter 3, Utah Administrative Rulemaking Act, which shall require:
8307	(i) the requesting entity to demonstrate to the department that the data is required for
8308	the research or statistical purposes proposed by the requesting entity; and
8309	(ii) the requesting entity to enter into a written agreement satisfactory to the
8310	department to protect the data in accordance with this [chapter] part or other applicable law
8311	(5) A person accessing identifiable health data pursuant to Subsection (4) may not
8312	further disclose the identifiable health data:
8313	(a) without prior approval of the department; and
8314	(b) unless the identifiable health data is disclosed or identified by control number only
8315	(6) Identifiable health data that has been designated by a data supplier as being
8316	subject to regulation under 42 C.F.R. Part 2, Confidentiality of Substance Use Disorder

Patient Records, may only be used or disclosed in accordance with applicable federal

regulations.

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8319	[26-33a-110.] <u>26B-8-509.</u> Penalties.
8320	(1) Any use, release, or publication of health care data contrary to the provisions of
8321	Sections [26-33a-108] <u>26B-8-307</u> and [26-33a-109] <u>26B-8-308</u> is a class A misdemeanor.
8322	(2) Subsection (1) does not relieve the person or organization responsible for that
8323	use, release, or publication from civil liability.
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8325	[26-33a-111.] <u>26B-8-510.</u> Health data not subject to subpoena or compulsory
8326	process Exception.
8327	Identifiable health data obtained in the course of activities undertaken or supported
8328	under this [chapter] part are not subject to subpoena or similar compulsory process in any
8329	civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual or
8330	organization with lawful access to identifiable health data under the provisions of this
8331	[chapter] part be compelled to testify with regard to such health data, except that data
8332	pertaining to a party in litigation may be subject to subpoena or similar compulsory process in
8333	an action brought by or on behalf of such individual to enforce any liability arising under this
8334	[chapter] <u>part</u> .
8335	
8336	[26-33a-115.] <u>26B-8-511.</u> Consumer-focused health care delivery and payment
8337	reform demonstration project.
8338	(1) The Legislature finds that:
8339	(a) current health care delivery and payment systems do not provide system wide
8340	incentives for the competitive delivery and pricing of health care services to consumers;
8341	(b) there is a compelling state interest to encourage consumers to seek high quality,
8342	low cost care and educate themselves about health care options;
8343	(c) some health care providers and health care payers have developed
8344	consumer-focused ideas for health care delivery and payment system reform, but lack the
8345	critical number of patient lives and payer involvement to accomplish system-wide
8346	consumer-focused reform; and
8347	(d) there is a compelling state interest to encourage as many health care providers
8348	and health care payers to join together and coordinate efforts at consumer-focused health
8349	care delivery and payment reform that would provide to consumers enrolled in a
8350	high-deductible health plan:

8351	(i) greater choice in health care options;
8352	(ii) improved services through competition; and
8353	(iii) more affordable options for care.
8354	(2) (a) The department shall meet with health care providers and health care payers
8355	for the purpose of coordinating a demonstration project for consumer-based health care
8356	delivery and payment reform.
8357	(b) Participation in the coordination efforts is voluntary, but encouraged.
8358	(3) The department, in order to facilitate the coordination of a demonstration project
8359	for consumer-based health care delivery and payment reform, shall convene and consult with
8360	pertinent entities including:
8361	(a) the Utah Insurance Department;
8362	(b) the Office of Consumer Health Services;
8363	(c) the Utah Medical Association;
8364	(d) the Utah Hospital Association; and
8365	(e) neutral, non-biased third parties with an established record for broad based,
8366	multi-provider and multi-payer quality assurance efforts and data collection.
8367	(4) The department shall supervise the efforts by entities under Subsection (3)
8368	regarding:
8369	(a) applying for and obtaining grant funding and other financial assistance that may
8370	be available for demonstrating consumer-based improvements to health care delivery and
8371	payment;
8372	(b) obtaining and analyzing information and data related to current health system
8373	utilization and costs to consumers; and
8374	(c) consulting with those health care providers and health care payers who elect to
8375	participate in the consumer-based health delivery and payment demonstration project.
8376	[(5) The executive director shall report to the Health System Reform Task Force by
8377	January 1, 2015, regarding the progress toward coordination of consumer-focused health
8378	care system payment and delivery reform.]
8379	
8380	[26-33a-116.] <u>26B-8-512.</u> Health care billing data.
8381	(1) Subject to Subsection (2), the department shall make aggregate data produced
8382	under this [chapter] part available to the public through a standardized application program

8383	interface format.
8384	(2) (a) The department shall ensure that data made available to the public under
8385	Subsection (1):
8386	(i) does not contain identifiable health data of a patient; and
8387	(ii) meets state and federal data privacy requirements, including the requirements of
8388	Section [26-33a-107] 26B-8-306.
8389	(b) The department may not release any data under Subsection (1) that may be
8390	identifiable health data of a patient.
8391	
8392	[26-33a-117.] <u>26B-8-513.</u> Identifying potential overuse of non-evidence-based
8393	health care.
8394	(1) The department shall, in accordance with Title 63G, Chapter 6a, Utah
8395	Procurement Code, contract with an entity to provide a nationally-recognized health waste
8396	calculator that:
8397	(a) uses principles such as the principles of the Choosing Wisely initiative of the
8398	American Board of Internal Medicine Foundation; and
8399	(b) is approved by the committee.
8400	(2) The department shall use the calculator described in Subsection (1) to:
8401	(a) analyze the data in the state's All Payer Claims Database; and
8402	(b) flag data entries that the calculator identifies as potential overuse of non-
8403	evidence-based health care.
8404	(3) The department, or a third party organization that the department contracts with in
8405	accordance with Title 63G, Chapter 6a, Utah Procurement Code, shall:
8406	(a) analyze the data described in Subsection (2)(b);
8407	(b) review current scientific literature about medical services that are best practice;
8408	(c) review current scientific literature about eliminating duplication in health care;
8409	(d) solicit input from Utah health care providers, health systems, insurers, and other
8410	stakeholders regarding duplicative health care quality initiatives and instances of
8411	non-alignment in metrics used to measure health care quality that are required by different
8412	health systems;
8413	(e) solicit input from Utah health care providers, health systems, insurers, and other

stakeholders on methods to avoid overuse of non-evidence-based health care; and

8415 (f) present the results of the analysis, research, and input described in Subsections 8416 (3)(a) through (e) to the committee. 8417 (4) The committee shall: 8418 (a) make recommendations for action and opportunities for improvement based on 8419 the results described in Subsection (3)(f); 8420 (b) make recommendations on methods to bring into alignment the various health 8421 care quality metrics different entities in the state use; and 8422 (c) identify priority issues and recommendations to include in an annual report. 8423 (5) The department, or the third party organization described in Subsection (3) shall: 8424 (a) compile the report described in Subsection (4)(c); and (b) submit the report to the committee for approval. 8425 8426 (6) Beginning in 2021, on or before November 1 each year, the department shall submit the report approved in Subsection (5)(b) to the Health and Human Services Interim 8427 8428 Committee. 8429 8430 [26-70-102.] 26B-8-514. Standard health record access form. 8431 (1) As used in this section: 8432 (a) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 8433 Pub. L. No. 104-191, 110 Stat. 1936, as amended. 8434 (b) "Patient" means the individual whose information is being requested. (c) "Personal representative" means an individual described in 45 C.F.R. Sec. 8435 8436 164.502(g). [(1)] (2) Before December 31, 2022, the department shall create a standard form 8437 8438 that: (a) is compliant with HIPAA and 42 C.F.R. Part 2; and 8439 (b) a patient or a patient's personal representative may use to request that a copy of 8440 8441 the patient's health records be sent to any of the following: 8442 (i) the patient: 8443 (ii) the patient's personal representative; 8444 (iii) the patient's attorney; or (iv) a third party authorized by the patient. 8445 [(2)] (3) The form described in Subsection (2) shall include fields for: 8446

8447 (a) the patient's name; (b) the patient's date of birth; 8448 8449 (c) the patient's phone number; 8450 (d) the patient's address: (e) (i) the patient's signature and date of signature, which may not require 8451 8452 notarization; or 8453 (ii) the signature of the patient's personal representative and date of signature, which 8454 may not require notarization; 8455 (f) the name, address, and phone number of the person to which the information will 8456 be disclosed; 8457 (g) the records requested, including whether the patient is requesting paper or 8458 electronic records: 8459 (h) the duration of time the authorization is valid; and 8460 (i) the dates of service requested. 8461 (4) The form described in Subsection (2) shall include the following options for 8462 the field described in Subsection $[\frac{(2)}{(2)}]$ (3) (g): 8463 (a) history and physical examination records; 8464 (b) treatment plans; 8465 (c) emergency room records; 8466 (d) radiology and lab reports; (e) operative reports; 8467 8468 (f) pathology reports; (g) consultations; 8469 8470 (h) discharge summary; (i) outpatient clinic records and progress notes; 8471 8472 (j) behavioral health evaluation; (k) behavioral health discharge summary; 8473 8474 (I) mental health therapy records; (m) financial information including an itemized billing statement; 8475 8476 (n) health insurance claim form; 8477 (o) billing form; and 8478 (p) other.

1 **HEALTH AND HUMAN SERVICES RECODIFICATION - HEALTH CARE DELIVERY AND ACCESS** 2 3 LONG TITLE 4 **General Description:** 5 6 This bill recodifies portions of the Utah Health Code and Utah Human Services Code. 7 **Highlighted Provisions:** 8 This bill: 9 recodifies provisions regarding health care delivery and access; and 10 makes technical and corresponding changes. Money Appropriated in this Bill: 11 None 12 **Other Special Clauses:** 13 14 This bill contains revisor's instructions. 15 List of sections affected: AMENDS: 16 17 26B-4-101 RENUMBERS AND AMENDS: 18 19 26-8a-105 26B-4-102 20 26-8a-106 26B-4-103 21 26-8a-201 26B-4-104 22 26-8a-202 26B-4-105 23 26-8a-203 26B-4-106 24 26-8a-207 26B-4-107 25 26-8a-208 26B-4-108 26-8a-210 26 26B-4-109 27 26-8a-212 26B-4-110

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192	26-49-701 26B-4-812
193	Statutory text:
194	
195	Chapter 4. Health Care - Delivery and Access.
196	
197	Part 1. Utah Emergency Medical Services System.
198	
199	26B-4-101. [Health care administration Reserved] Definitions.
200	[Reserved] As used in this part:
201	(1) (a) "911 ambulance or paramedic services" means:
202	(i) either:
203	(A) 911 ambulance service;
204	(B) 911 paramedic service; or
205	(C) both 911 ambulance and paramedic service; and
206	(ii) a response to a 911 call received by a designated dispatch center that receives
207	911 or E911 calls.
208	(b) "911 ambulance or paramedic services" does not mean a seven or 10 digit
209	telephone call received directly by an ambulance provider licensed under this part.
210	(2) "Ambulance" means a ground, air, or water vehicle that:
211	(a) transports patients and is used to provide emergency medical services; and
212	(b) is required to obtain a permit under Section 26-8a-304 to operate in the state.
213	(3) "Ambulance provider" means an emergency medical service provider that:
214	(a) transports and provides emergency medical care to patients; and
215	(b) is required to obtain a license under Part 4, Ambulance and Paramedic Providers.
216	(4) (a) "Behavioral emergency services" means delivering a behavioral health
217	intervention to a patient in an emergency context within a scope and in accordance with
218	guidelines established by the department.
219	(b) "Behavioral emergency services" does not include engaging in the:
220	(i) practice of mental health therapy as defined in Section 58-60-102;
221	(ii) practice of psychology as defined in Section 58-61-102;
222	(iii) practice of clinical social work as defined in Section 58-60-202;

223	(iv) practice of certified social work as defined in Section 58-60-202;
224	(v) practice of marriage and family therapy as defined in Section 58-60-302;
225	(vi) practice of clinical mental health counseling as defined in Section 58-60-402; or
226	(vii) practice as a substance use disorder counselor as defined in Section 58-60-502.
227	(5) "Committee" means the State Emergency Medical Services Committee created by
228	Section 26B-1-204.
229	(6) "Community paramedicine" means medical care:
230	(a) provided by emergency medical service personnel; and
231	(b) provided to a patient who is not:
232	(i) in need of ambulance transportation; or
233	(ii) located in a health care facility as defined in Section 26-21-2.
234	(7) "Direct medical observation" means in-person observation of a patient by a
235	physician, registered nurse, physician's assistant, or individual licensed under Section
236	<u>26-8a-302.</u>
237	(8) "Emergency medical condition" means:
238	(a) a medical condition that manifests itself by symptoms of sufficient severity,
239	including severe pain, that a prudent layperson, who possesses an average knowledge of
240	health and medicine, could reasonably expect the absence of immediate medical attention to
241	result in:
242	(i) placing the individual's health in serious jeopardy;
243	(ii) serious impairment to bodily functions; or
244	(iii) serious dysfunction of any bodily organ or part; or
245	(b) a medical condition that in the opinion of a physician or the physician's designee
246	requires direct medical observation during transport or may require the intervention of an
247	individual licensed under Section 26-8a-302 during transport.
248	(9) (a) "Emergency medical service personnel" means an individual who provides
249	emergency medical services or behavioral emergency services to a patient and is required to
250	be licensed or certified under Section 26-8a-302.
251	(b) "Emergency medical service personnel" includes a paramedic, medical director of
252	a licensed emergency medical service provider, emergency medical service instructor,
253	behavioral emergency services technician, other categories established by the committee,
254	and a certified emergency medical dispatcher.

255	(10) "Emergency medical service providers" means:
256	(a) licensed ambulance providers and paramedic providers;
257	(b) a facility or provider that is required to be designated under Subsection
258	26-8a-303(1)(a); and
259	(c) emergency medical service personnel.
260	(11) "Emergency medical services" means:
261	(a) medical services;
262	(b) transportation services;
263	(c) behavioral emergency services; or
264	(d) any combination of the services described in Subsections (11)(a) through (c).
265	(12) "Emergency medical service vehicle" means a land, air, or water vehicle that is:
266	(a) maintained and used for the transportation of emergency medical personnel,
267	equipment, and supplies to the scene of a medical emergency; and
268	(b) required to be permitted under Section 26-8a-304.
269	(13) "Governing body":
270	(a) means the same as that term is defined in Section 11-42-102; and
271	(b) for purposes of a "special service district" under Section 11-42-102, means a
272	special service district that has been delegated the authority to select a provider under this
273	part by the special service district's legislative body or administrative control board.
274	(14) "Interested party" means:
275	(a) a licensed or designated emergency medical services provider that provides
276	emergency medical services within or in an area that abuts an exclusive geographic service
277	area that is the subject of an application submitted pursuant to Part 4, Ambulance and
278	Paramedic Providers;
279	(b) any municipality, county, or fire district that lies within or abuts a geographic
280	service area that is the subject of an application submitted pursuant to Part 4, Ambulance
281	and Paramedic Providers; or
282	(c) the department when acting in the interest of the public.
283	(15) "Level of service" means the level at which an ambulance provider type of
284	service is licensed as:
285	(a) emergency medical technician;
286	(b) advanced emergency medical technician; or

• • •	
287	(c) paramedic.
288	(16) "Medical control" means a person who provides medical supervision to an
289	emergency medical service provider.
290	(17) "Non-911 service" means transport of a patient that is not 911 transport under
291	Subsection (1).
292	(18) "Nonemergency secured behavioral health transport" means an entity that:
293	(a) provides nonemergency secure transportation services for an individual who:
294	(i) is not required to be transported by an ambulance under Section 26-8a-305; and
295	(ii) requires behavioral health observation during transport between any of the
296	following facilities:
297	(A) a licensed acute care hospital;
298	(B) an emergency patient receiving facility;
299	(C) a licensed mental health facility; and
300	(D) the office of a licensed health care provider; and
301	(b) is required to be designated under Section 26-8a-303.
302	(19) "Paramedic provider" means an entity that:
303	(a) employs emergency medical service personnel; and
304	(b) is required to obtain a license under Part 4, Ambulance and Paramedic Providers
305	(20) "Patient" means an individual who, as the result of illness, injury, or a behaviora
306	emergency condition, meets any of the criteria in Section 26-8a-305.
307	(21) "Political subdivision" means:
308	(a) a city, town, or metro township;
309	(b) a county;
310	(c) a special service district created under Title 17D, Chapter 1, Special Service
311	District Act, for the purpose of providing fire protection services under Subsection
312	<u>17D-1-201(9);</u>
313	(d) a local district created under Title 17B, Limited Purpose Local Government
314	Entities - Local Districts, for the purpose of providing fire protection, paramedic, and
315	emergency services;
316	(e) areas coming together as described in Subsection 26-8a-405.2(2)(b)(ii); or
317	(f) an interlocal entity under Title 11, Chapter 13, Interlocal Cooperation Act.
318	(22) "Trauma" means an injury requiring immediate medical or surgical intervention.

319	(23) "Trauma system" means a single, statewide system that:
320	(a) organizes and coordinates the delivery of trauma care within defined geographic
321	areas from the time of injury through transport and rehabilitative care; and
322	(b) is inclusive of all prehospital providers, hospitals, and rehabilitative facilities in
323	delivering care for trauma patients, regardless of severity.
324	(24) "Triage" means the sorting of patients in terms of disposition, destination, or
325	priority. For prehospital trauma victims, triage requires a determination of injury severity to
326	assess the appropriate level of care according to established patient care protocols.
327	(25) "Triage, treatment, transportation, and transfer guidelines" means written
328	procedures that:
329	(a) direct the care of patients; and
330	(b) are adopted by the medical staff of an emergency patient receiving facility, trauma
331	center, or an emergency medical service provider.
332	(26) "Type of service" means the category at which an ambulance provider is licensed
333	as:
334	(a) ground ambulance transport;
335	(b) ground ambulance interfacility transport; or
336	(c) both ground ambulance transport and ground ambulance interfacility transport.
337	
338	[26-8a-105.] <u>26B-4-102.</u> Department powers.
339	The department shall:
340	(1) coordinate the emergency medical services within the state;
341	(2) administer this [chapter] part and the rules established pursuant to it;
342	(3) establish a voluntary task force representing a diversity of emergency medical
343	service providers to advise the department and the committee on rules;
344	(4) establish an emergency medical service personnel peer review board to advise
345	the department concerning discipline of emergency medical service personnel under this
346	[chapter] <u>part</u> ; [and]
347	(5) adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative
348	Rulemaking Act, to:
349	(a) license ambulance providers and paramedic providers;
350	(b) permit ambulances, emergency medical response vehicles, and nonemergency

351	secured behavioral health transport vehicles, including approving an emergency vehicle				
352	operator's course in accordance with Section 26-8a-304;				
353	(c) establish:				
354	(i) the qualifications for membership of the peer review board created by this section;				
355	(ii) a process for placing restrictions on a license while an investigation is pending;				
356	(iii) the process for the investigation and recommendation by the peer review board;				
357	and				
358	(iv) the process for determining the status of a license while a peer review board				
359	investigation is pending;				
360	(d) establish application, submission, and procedural requirements for licenses,				
361	designations, and permits; and				
362	(e) establish and implement the programs, plans, and responsibilities as specified in				
363	other sections of this [chapter.] part;				
364	(6) develop and implement, in cooperation with state, federal, and local agencies				
365	empowered to oversee disaster response activities, plans to provide emergency medical				
366	services during times of disaster or emergency;				
367	(7) establish a pediatric quality improvement resource program; and				
368	(8) develop and implement a statewide program to provide support and counseling fo				
369	personnel who have been exposed to one or more stressful incidents in the course of				
370	providing emergency services which shall include:				
371	(a) ongoing training for agencies providing emergency services and counseling				
372	program volunteers;				
373	(b) critical incident stress debriefing for personnel at no cost to the emergency				
374	provider; and				
375	(c) advising the department on training requirements for licensure as a behavioral				
376	emergency services technician.				
377					
378	[26-8a-106.] <u>26B-4-103.</u> Waiver of rules and education and licensing				
379	requirements.				
380	(1) Upon application, the department, or the committee with the concurrence of the				
381	department, may waive the requirements of a rule the department, or the committee with the				
382	concurrence of the department, has adopted if:				

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383	(a) the person applying for the waiver satisfactorily demonstrates that:			
384	(i) the waiver is necessary for a pilot project to be undertaken by the applicant;			
385	(ii) in the particular situation, the requirement serves no beneficial public purpose; or			
386	(iii) circumstances warrant that waiver of the requirement outweighs the public benefit			
387	to be gained by adherence to the rule; and			
388	(b) for a waiver granted under Subsection (1)(a)(ii) or (iii):			
389	(i) the committee or department extends the waiver to similarly situated persons upon			
390	application; or			
391	(ii) the department, or the committee with the concurrence of the department, amends			
392	the rule to be consistent with the waiver.			
393	(2) A waiver of education or licensing requirements may be granted to a veteran, as			
394	defined in Section 68-3-12.5, if the veteran:			
395	(a) provides to the committee or department documentation showing military			
396	education and training in the field in which licensure is sought; and			
397	(b) successfully passes any examination required.			
398	(3) No waiver may be granted under this section that is inconsistent with the			
399	provisions of this [chapter] part.			
400				
401	[26-8a-201.] <u>26B-4-104.</u> Public awareness efforts.			
402	The department may:			
403	(1) develop programs to inform the public of the emergency medical service system;			
404	and			
405	(2) develop and disseminate emergency medical training programs for the public,			
406	which emphasize the prevention and treatment of injuries and illnesses.			
407				
408	[26-8a-202.] <u>26B-4-105.</u> Emergency medical communications.			
409	Consistent with federal law, the department is the lead agency for coordinating the			
410	statewide emergency medical service communication systems under which emergency			
411	medical personnel, dispatch centers, and treatment facilities provide medical control and			

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[26-8a-203.] <u>26B-4-106.</u> Data collection.

coordination between emergency medical service providers.

- 415 (1) The committee shall specify the information that shall be collected for the 416 emergency medical services data system established pursuant to Subsection (2).
- 417 (2) (a) The department shall establish an emergency medical services data system, 418 which shall provide for the collection of information, as defined by the committee, relating to 419 the treatment and care of patients who use or have used the emergency medical services 420 system.
- (b) The committee shall coordinate with the Health Data Authority created in [Chapter 33a] Chapter 6, Part 5, Utah Health Data Authority [Act], to create a report of data collected by the Health Data Committee under Section [26-33a-106.1] 26B-6-504 regarding:
 - (i) appropriate analytical methods;

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- 425 (ii) the total amount of air ambulance flight charges in the state for a one-year period; 426 and
 - (iii) of the total number of flights in a one-year period under Subsection (2)(b)(ii):
- 428 (A) the number of flights for which a patient had no personal responsibility for paying 429 part of the flight charges;
 - (B) the number of flights for which a patient had personal responsibility to pay all or part of the flight charges;
- 432 (C) the range of flight charges for which patients had personal responsibility under 433 Subsection (2)(b)(iii)(B), including the median amount for paid patient personal responsibility; 434 and
 - (D) the name of any air ambulance provider that received a median paid amount for patient responsibility in excess of the median amount for all paid patient personal responsibility during the reporting year.
 - (c) The department may share, with the Department of Public Safety, information from the emergency medical services data system that:
 - (i) relates to traffic incidents;
 - (ii) is for the improvement of traffic safety;
 - (iii) may not be used for the prosecution of criminal matters; and
- 443 (iv) may not include any personally identifiable information.
- 444 (3) (a) On or before October 1, the department shall make the information in Subsection (2)(b) public and send the information in Subsection (2)(b) to:
 - (i) the Health and Human Services Interim Committee; and

- (ii) public safety dispatchers and first responders in the state.
 (b) Before making the information in Subsection (2)(b) public, the committee
- 448 (b) Before making the information in Subsection (2)(b) public, the committee shall provide the air ambulance providers named in the report with the opportunity to respond to the accuracy of the information in the report under Section 26-33a-107.
 - (4) Persons providing emergency medical services:

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- 452 (a) shall provide information to the department for the emergency medical services 453 data system established pursuant to Subsection (2)(a);
- 454 (b) are not required to provide information to the department under Subsection (2)(b); 455 and
- (c) may provide information to the department under Subsection (2)(b) or (3)(b).

458 [26-8a-207.] 26B-4-107. Emergency Medical Services Grant Program.

- (1) Funds appropriated to the department for the Emergency Medical Services Grant Program shall be used for improvement of delivery of emergency medical services and administrative costs as described in Subsection (2)(a).
- (2) From the total amount of funds appropriated to the department under Subsection(1), the department shall use:
 - (a) an amount equal to 50% of the funds:
 - (i) to provide staff support; and
 - (ii) for other expenses incurred in:
 - (A) administration of grant funds; and
 - (B) other department administrative costs under this [chapter] part; and
- (b) an amount equal to 50% of the funds to provide emergency medical services grants in accordance with Subsection (3).
 - (3) (a) A recipient of a grant under this section shall actively provide emergency medical services within the state.
- (b) (i) From the total amount of funds used to provide grants under Subsection (3), the department shall distribute an amount equal to 21% as per capita block grants for use specifically related to the provision of emergency medical services to nonprofit prehospital emergency medical services providers that are either licensed or designated and to emergency medical services that are the primary emergency medical services for a service area.

- 479 <u>(ii)</u> The department shall determine the grant amounts by prorating available funds 480 on a per capita basis by county as described in department rule.
 - (c) Subject to Subsections (3)(d) through (f), the committee shall use the remaining grant funds to award competitive grants to licensed emergency medical services providers that provide emergency medical services within counties of the third through sixth class, in accordance with rules made by the committee.
 - (d) A grant awarded under Subsection (3)(c) shall be used:

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- (i) for the purchase of equipment, subject to Subsection (3)(e); or
- 487 (ii) for the recruitment, training, or retention of licensed emergency medical services 488 providers.
 - (e) A recipient of a grant under Subsection (3)(c) may not use more than \$100,000 in grant proceeds for the purchase of vehicles.
 - (f) A grant awarded for the purpose described in Subsection (3)(d)(ii) is ongoing for a period of up to three years.
 - (g) (i) If, after providing grants under Subsections (3)(c) through (f), any grant funds are unallocated at the end of the fiscal year, the committee shall distribute the unallocated grant funds as per capita block grants as described in Subsection (3)(b).
 - (ii) Any grant funds distributed as per capita grants under Subsection (3)(g)(i) are in addition to the amount described in Subsection (3)(b).

[26-8a-208.] <u>26B-4-108.</u> Fees for training equipment rental, testing, and quality assurance reviews.

- (1) The department may charge fees, established [pursuant to] in accordance with Section 26B-1-209:
 - (a) for the use of department-owned training equipment;
 - (b) to administer tests and conduct quality assurance reviews; and
 - (c) to process an application for a designation, permit, or license.
- 506 (2) (a) Fees collected under Subsections (1)(a) and (b) shall be separate dedicated 507 credits.
 - (b) Fees under Subsection (1)(a) may be used to purchase training equipment.
- 509 (c) Fees under Subsection (1)(b) may be used to administer tests and conduct quality 510 assurance reviews.

511	[26-8a-210.] <u>26B-4-109.</u> Regional Emergency Medical Services Liaisons				
512	Qualifications Duties.				
513	(1) As used in this section:				
514	(a) "Liaison" means a regional emergency medical services liaison hired under this				
515	section.				
516	(b) "Rural county" means a county of the third, fourth, fifth, or sixth class.				
517	(2) The department shall hire five individuals to serve as regional emergency medical				
518	services liaisons to:				
519	(a) serve the needs of rural counties in providing emergency medical services in				
520	accordance with this [chapter] part;				
521	(b) act as a liaison between the department and individuals or entities responsible for				
522	emergency medical services in rural counties, including:				
523	(i) emergency medical services providers;				
524	(ii) local officials; and				
525	(iii) local health departments or agencies;				
526	(c) provide support and training to emergency medical services providers in rural				
527	counties;				
528	(d) assist rural counties in utilizing state and federal grant programs for financing				
529	emergency medical services; and				
530	(e) serve as emergency medical service personnel to assist licensed providers with				
531	ambulance staffing needs within rural counties.				
532	(3) Each liaison hired under Subsection (2):				
533	(a) shall reside in a rural county; and				
534	(b) shall be licensed as:				
535	(i) an advanced emergency medical technician as defined in Section [26-8c-102]				
536	<u>26B-2-3XX</u> ; or				
537	(ii) a paramedic as defined in Section [26-8c-102] <u>26B-2-3XX</u> .				
538	(4) The department shall provide each liaison with a vehicle and other equipment in				
539	accordance with rules established by the department.				
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541	[26-8a-212.] <u>26B-4-110.</u> Community paramedicine program.				
542	(1) A ground ambulance provider or a designated quick response provider, as				

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543	designated in accordance with Section [26-8a-303] 26B-2-317, may develop and implement				
544	a community paramedicine program.				
545	(2) (a) Before providing services, a community paramedicine program shall:				
546	(i) implement training requirements as determined by the committee; and				
547	(ii) submit a written community paramedicine operational plan to the department that				
548	meets requirements established by the committee.				
549	(b) A community paramedicine program shall report data, as determined by the				
550	committee, related to community paramedicine to the department.				
551	(3) A service provided as part of a community paramedicine program may not be				
552	billed to an individual or a health benefit plan as defined in Section 31A-1-301 unless:				
553	(a) the service is provided in partnership with a health care facility as defined in				
554	Section [26-21-2] <u>26B-2-201</u> ; and				
555	(b) the partnering health care facility is the person that bills the individual or health				
556	benefit plan.				
557	(4) Nothing in this section affects any billing authorized under Section [26-8a-403]				
558	<u>26B-2-328</u> .				
559	(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the				
560	committee shall make rules to implement this section.				
561					
562	[26-8a-250.] <u>26B-4-111.</u> Establishment of statewide trauma system.				
563	The department shall establish and actively supervise a statewide trauma system to:				
564	(1) promote optimal care for trauma patients;				
565	(2) alleviate unnecessary death and disability from trauma and emergency illness;				
566	(3) inform health care providers about trauma system capabilities;				
567	(4) encourage the efficient and effective continuum of patient care, including				
568	prevention, prehospital care, hospital care, and rehabilitative care; and				
569	(5) minimize the overall cost of trauma care.				
570					
571	[26-8a-252.] 26B-4-112. Statewide trauma system Department duties.				

In connection with the statewide trauma system established in Section [26-8a-250] 572 26B-2-311, the department shall: 573

(1) establish a statewide trauma system plan that:

(a) identifies statewide trauma care needs, objectives, and priorities;				
(b) identifies the equipment, facilities, personnel training, and other things necessary				
to create and maintain a statewide trauma system; and				
(c) organizes and coordinates trauma care within defined geographic areas;				
(2) support the statewide trauma system by:				
(a) facilitating the coordination of prehospital, acute care, and rehabilitation services				
and providers through state regulation and oversight;				
(b) facilitating the ongoing evaluation and refinement of the statewide trauma system;				
(c) providing educational programs;				
(d) encouraging cooperation between community organizations, health care facilities,				
public health officials, emergency medical service providers, and rehabilitation facilities for				
the development of a statewide trauma system;				
(e) implementing a quality assurance program using information from the statewide				
trauma registry established pursuant to Section [26-8a-253] <u>26B-2-313</u> ;				
(f) establishing trauma center designation requirements in accordance with Section				
[26-8a-254] <u>26B-2-314</u> ; and				
(g) developing standards so that:				
(i) trauma centers are categorized according to their capability to provide care;				
(ii) trauma victims are triaged at the initial point of patient contact; and				
(iii) trauma patients are sent to appropriate health care facilities.				
[26-8a-253.] <u>26B-4-113.</u> Statewide trauma [registry] <u>system Registry</u> and				
quality assurance program.				
(1) The department shall:				
(a) establish and fund a statewide trauma registry to collect and analyze information				
on the incidence, severity, causes, and outcomes of trauma;				
(b) establish, by rule, the data elements, the medical care providers that shall report,				
and the time frame and format for reporting;				
(c) use the data collected to:				
(i) improve the availability and delivery of prehospital and hospital trauma care;				

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requirements of this [chapter] part and applicable department rules; and

(ii) assess trauma care delivery, patient care outcomes, and compliance with the

607	(iii) regularly produce and disseminate reports to data providers, state government,				
608	and the public; and				
609	(d) support data collection and abstraction by providing:				
610	(i) a data collection system and technical assistance to each hospital that submits				
611	data; and				
612	(ii) funding or, at the discretion of the department, personnel for collection and				
613	abstraction for each hospital not designated as a trauma center under the standards				
614	established pursuant to Section [26-8a-254] <u>26B-2-314</u> .				
615	(2) (a) Each hospital shall submit trauma data in accordance with rules established				
616	under Subsection (1).				
617	(b) A hospital designated as a trauma center shall submit data as part of the ongoing				
618	quality assurance program established in Section [26-8a-252] <u>26B-2-312</u> .				
619	(3) The department shall assess:				
620	(a) the effectiveness of the data collected pursuant to Subsection (1); and				
621	(b) the impact of the statewide trauma system on the provision of trauma care.				
622	(4) Data collected under this section shall be subject to [Chapter 3] Chapter 6, Part 2				
623	, Health Statistics.				
624	(5) No person may be held civilly liable for having provided data to the department in				
625	accordance with this section.				
626					
627	[26-8a-254.] <u>26B-4-114.</u> <u>Statewide trauma system</u> Trauma center				
628	designations and guidelines.				
629	(1) The department, after seeking the advice of the trauma system advisory				
630	committee, shall establish by rule:				
631	(a) trauma center designation requirements; and				
632	(b) model state guidelines for triage, treatment, transportation, and transfer of trauma				
633	patients to the most appropriate health care facility.				
634	(2) The department shall designate as a trauma center each hospital that:				
635	(a) voluntarily requests a trauma center designation; and				
636	(b) meets the applicable requirements established pursuant to Subsection (1).				
637					
638	[26-8a-301.] <u>26B-4-115.</u> <u>Certificates, Designations, Permits, and Licenses</u>				

639 General requirement.

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- 640 (1) Except as provided in Section [26-8a-308] 26B-2-322 or [26-8b-201] 26B-2-304 :
- 641 (a) an individual may not provide emergency medical services without a license or 642 certification issued under Section [26-8a-302] 26B-2-316;
 - (b) a facility or provider may not hold itself out as a designated emergency medical service provider or nonemergency secured behavioral health transport provider without a designation issued under Section [26-8a-303] 26B-2-317;
 - (c) a vehicle may not operate as an ambulance, emergency response vehicle, or nonemergency secured behavioral health transport vehicle without a permit issued under Section [26-8a-304] 26B-2-318; and
- 649 (d) an entity may not respond as an ambulance or paramedic provider without the 650 appropriate license issued under [Part 4, Ambulance and Paramedic Providers] this part for 651 ambulance and paramedic providers.
- 652 (2) Section 26-8a-502 applies to violations of this section.

[26-8a-302.] 26B-4-116. Licensure of emergency medical service personnel. 654

- (1) To promote the availability of comprehensive emergency medical services throughout the state, the committee shall establish:
- (a) initial and ongoing licensure and training requirements for emergency medical service personnel in the following categories:
- 659 (i) paramedic;
- 660 (ii) advanced emergency medical services technician;
 - (iii) emergency medical services technician;
 - (iv) behavioral emergency services technician; and
 - (v) advanced behavioral emergency services technician;
- 664 (b) a method to monitor the certification status and continuing medical education 665 hours for emergency medical dispatchers; and
 - (c) quidelines for giving credit for out-of-state training and experience.
- (2) The department shall, based on the requirements established in Subsection (1): 667
- 668 (a) develop, conduct, and authorize training and testing for emergency medical 669 service personnel;
 - (b) issue a license and license renewals to emergency medical service personnel

other than emergency medical dispatchers; and

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- (c) verify the certification of emergency medical dispatchers.
- (3) The department shall coordinate with local mental health authorities described in
 Section 17-43-301 to develop and authorize initial and ongoing licensure and training
 requirements for licensure as a:
 - (a) behavioral emergency services technician; and
- (b) advanced behavioral emergency services technician.
 - (4) As provided in Section [26-8a-502] 26B-2-348, an individual issued a license or certified under this section may only provide emergency medical services to the extent allowed by the license or certification.
 - (5) An individual may not be issued or retain a license under this section unless the individual obtains and retains background clearance under Section [26-8a-310] 26B-2-324.
 - (6) An individual may not be issued or retain a certification under this section unless the individual obtains and retains background clearance in accordance with Section [26-8a-310.5] 26B-2-325.

[26-8a-303.] <u>26B-4-117.</u> Designation of emergency medical service providers and nonemergency secured behavioral health transport providers.

- (1) To ensure quality emergency medical services, the committee shall establish designation requirements for:
 - (a) emergency medical service providers in the following categories:
- 692 (i) quick response provider;
 - (ii) resource hospital for emergency medical providers;
- 694 (iii) emergency medical service dispatch center;
 - (iv) emergency patient receiving facilities; and
- 696 (v) other types of emergency medical service providers as the committee considers 697 necessary; and
 - (b) nonemergency secured behavioral health transport providers.
- (2) The department shall, based on the requirements in Subsection (1), issue
 designations to emergency medical service providers and nonemergency secured behavioral
 health transport providers listed in Subsection (1).
 - (3) As provided in Section [26-8a-502] 26B-2-348, an entity issued a designation

under Subsection (2) may only function and hold itself out in accordance with its designation.

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[26-8a-304.] 26B-4-118. Permits for emergency medical service vehicles and nonemergency secured behavioral health transport vehicles.

- (1) (a) To ensure that emergency medical service vehicles and nonemergency secured behavioral health transport vehicles are adequately staffed, safe, maintained, properly equipped, and safely operated, the committee shall establish permit requirements at levels it considers appropriate in the following categories:
- 711 (i) ambulance;
 - (ii) emergency medical response vehicle; and
 - (iii) nonemergency secured behavioral health transport vehicle.
 - (b) The permit requirements under Subsections (1)(a)(i) and (ii) shall include a requirement that beginning on or after January 31, 2014, every operator of an ambulance or emergency medical response vehicle annually provide proof of the successful completion of an emergency vehicle operator's course approved by the department for all ambulances and emergency medical response vehicle operators.
 - (2) The department shall, based on the requirements established in Subsection (1), issue permits to emergency medical service vehicles and nonemergency secured behavioral health transport vehicles.

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[26-8a-305.] <u>26B-4-119.</u> Ambulance license required for emergency medical transport.

Except as provided in Section [26-8a-308] <u>26B-2-322</u>, only an ambulance operating under a permit issued under Section [26-8a-304] <u>26B-2-318</u> may transport an individual who:

- (1) is in an emergency medical condition;
- 729 (2) is medically or mentally unstable, requiring direct medical observation during 730 transport;
- 731 (3) is physically incapacitated because of illness or injury and in need of immediate 732 transport by emergency medical service personnel;
 - (4) is likely to require medical attention during transport;
 - (5) is being maintained on any type of emergency medical electronic monitoring;

- 735 (6) is receiving or has recently received medications that could cause a sudden 736 change in medical condition that might require emergency medical services;
 - (7) requires IV administration or maintenance, oxygen that is not patient-operated, or other emergency medical services during transport;
 - (8) needs to be immobilized during transport to a hospital, an emergency patient receiving facility, or mental health facility due to a mental or physical condition, unless the individual is in the custody of a peace officer and the primary purpose of the restraint is to prevent escape;
 - (9) needs to be immobilized due to a fracture, possible fracture, or other medical condition; or
 - (10) otherwise requires or has the potential to require a level of medical care that the committee establishes as requiring direct medical observation.

[26-8a-306.] 26B-4-120. Medical control.

- (1) The committee shall establish requirements for the coordination of emergency medical services rendered by emergency medical service providers, including the coordination between prehospital providers, hospitals, emergency patient receiving facilities, and other appropriate destinations.
- (2) The committee shall establish requirements for the medical supervision of emergency medical service providers to assure adequate physician oversight of emergency medical services and quality improvement.

[26-8a-307.] <u>26B-4-121.</u> Patient destination.

- (1) If an individual being transported by a ground or air ambulance is in a critical or unstable medical condition, the ground or air ambulance shall transport the patient to the trauma center or closest emergency patient receiving facility appropriate to adequately treat the patient.
- (2) If the patient's condition is not critical or unstable as determined by medical control, the ground or air ambulance may transport the patient to the:
- (a) hospital, emergency patient receiving facility, licensed mental health facility, or other medical provider chosen by the patient and approved by medical control as appropriate for the patient's condition and needs; or

(b) nearest hospital, emergency patient receiving facility, licensed mental health facility, or other medical provider approved by medical control as appropriate for the patient's condition and needs if the patient expresses no preference.

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[26-8a-308.] 26B-4-122. Exemptions.

- (1) The following persons may provide emergency medical services to a patient without being licensed under this [chapter] part:
- (a) out-of-state emergency medical service personnel and providers in time of disaster;
 - (b) an individual who gratuitously acts as a Good Samaritan;
 - (c) a family member;
- 778 (d) a private business if emergency medical services are provided only to employees 779 at the place of business and during transport;
 - (e) an agency of the United States government if compliance with this [chapter] part would be inconsistent with federal law; and
 - (f) police, fire, and other public service personnel if:
- 783 (i) emergency medical services are rendered in the normal course of the person's duties; and
 - (ii) medical control, after being apprised of the circumstances, directs immediate transport.
 - (2) An ambulance or emergency response vehicle may operate without a permit issued under Section [26-8a-304] 26B-2-318 in time of disaster.
 - (3) Nothing in this [chapter] _part_ or Title 58, Occupations and Professions, may be construed as requiring a license for an individual to administer cardiopulmonary resuscitation or to use a fully automated external defibrillator under Section [26-8b-201] _26B-X-XXX_.
 - (4) Nothing in this [chapter] part may be construed as requiring a license, permit, or designation for an acute care hospital, medical clinic, physician's office, or other fixed medical facility that:
- 795 (a) is staffed by a physician, physician's assistant, nurse practitioner, or registered 796 nurse; and
- (b) treats an individual who has presented himself or was transported to the hospital, clinic, office, or facility.

799	[26-8a-309.]	26B-4-123.	Out-of-state vehicles.
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- (1) An ambulance or emergency response vehicle from another state may not pick up a patient in Utah to transport that patient to another location in Utah or to another state without a permit issued under Section [26-8a-304] 26B-2-318 and, in the case of an ambulance, a license issued under [Part 4, Ambulance and Paramedic Providers] this part for ambulance and paramedic providers.
- (2) Notwithstanding Subsection (1), an ambulance or emergency response vehicle from another state may, without a permit or license:
 - (a) transport a patient into Utah; and
 - (b) provide assistance in time of disaster.
- (3) The department may enter into agreements with ambulance and paramedic providers and their respective licensing agencies from other states to assure the expeditious delivery of emergency medical services beyond what may be reasonably provided by licensed ambulance and paramedic providers, including the transportation of patients between states.

[26-8a-310.] <u>26B-4-124.</u> Background clearance for emergency medical service personnel.

- (1) Subject to Section [26-8a-310.5] <u>26B-2-325</u>, the department shall determine whether to grant background clearance for an individual seeking licensure or certification under Section [26-8a-302] 26B-2-316 from whom the department receives:
- (a) the individual's social security number, fingerprints, and other personal identification information specified by the department under Subsection (4); and
 - (b) any fees established by the department under Subsection (10).
- (2) The department shall determine whether to deny or revoke background clearance for individuals for whom the department has previously granted background clearance.
- (3) The department shall determine whether to grant, deny, or revoke background clearance for an individual based on an initial and ongoing evaluation of information the department obtains under Subsections (5) and (11), which, at a minimum, shall include an initial criminal background check of state, regional, and national databases using the individual's fingerprints.
 - (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah

- 831 Administrative Rulemaking Act, that specify:
- (a) the criteria the department will use under Subsection (3) to determine whether to grant, deny, or revoke background clearance; and
- (b) the other personal identification information an individual seeking licensure or certification under Section [26-8a-302] 26B-2-316 must submit under Subsection (1).
 - (5) To determine whether to grant, deny, or revoke background clearance, the department may access and evaluate any of the following:
- (a) Department of Public Safety arrest, conviction, and disposition records described
 in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
 information in state, regional, and national records files;
 - (b) adjudications by a juvenile court of committing an act that if committed by an adult would be a felony or misdemeanor, if:
 - (i) the applicant is under 28 years old; or
- 844 (ii) the applicant:

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- 845 (A) is over 28 years old; and
- 846 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea 847 in abeyance or diversion agreement for a felony or misdemeanor;
- (c) juvenile court arrest, adjudication, and disposition records, other than those under Subsection (5)(b), as allowed under Section 78A-6-209;
 - (d) child abuse or neglect findings described in Section 80-3-404;
 - (e) the department's Licensing Information System described in Section 80-2-1002;
 - (f) the department's database of reports of vulnerable adult abuse, neglect, or exploitation, described in Section [62A-3-311.1] 26B-X-XXX;
 - (g) Division of Professional Licensing records of licensing and certification under Title58, Occupations and Professions;
 - (h) records in other federal criminal background databases available to the state; and
- 857 (i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance, 858 pending diversion agreements, or dispositions.
 - (6) Except for the Department of Public Safety, an agency may not charge the department for information accessed under Subsection (5).
- 861 (7) When evaluating information under Subsection (3), the department shall classify a crime committed in another state according to the closest matching crime under Utah law,

regardless of how the crime is classified in the state where the crime was committed.

- (8) The department shall adopt measures to protect the security of information the department accesses under Subsection (5), which shall include limiting access by department employees to those responsible for acquiring, evaluating, or otherwise processing the information.
- (9) The department may disclose personal identification information the department receives under Subsection (1) to the department to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (5)(d) through (f).
- 872 (10) The department may charge fees, in accordance with Section 63J-1-504, to pay 873 for:
- (a) the cost of obtaining, storing, and evaluating information needed under

 Subsection (3), both initially and on an ongoing basis, to determine whether to grant, deny, or

 revoke background clearance; and
 - (b) other department costs related to granting, denying, or revoking background clearance.
 - (11) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:
 - (a) retain, separate from other division records, personal information under Subsection (1), including any fingerprints sent to it by the department; and
 - (b) notify the department upon receiving notice that an individual for whom personal information has been retained is the subject of:
 - (i) a warrant for arrest;
- 886 (ii) an arrest;

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- 887 (iii) a conviction, including a plea in abeyance; or
- 888 (iv) a pending diversion agreement.
 - (12) The department shall use the Direct Access Clearance System database created under Section [26-21-209] <u>26B-X-XXX</u> to manage information about the background clearance status of each individual for whom the department is required to make a determination under Subsection (1).
- 893 (13) Clearance granted for an individual licensed or certified under Section 26-8a-302 894 is valid until two years after the day on which the individual is no longer licensed or certified in

Utah as emergency medical service personnel.

[26-8a-310.5.] <u>26B-4-125.</u> Background check requirements for emergency medical dispatchers.

An emergency medical dispatcher seeking certification under Section 26-8a-302 shall undergo the background clearance process described in Section 26-8a-310 unless the emergency medical dispatcher can demonstrate that the emergency medical dispatcher has received and currently holds an approved Department of Public Safety background clearance.

[26-8a-501.] <u>26B-4-126.</u> Discrimination prohibited.

- (1) No person licensed or designated pursuant to this [chapter] _part_ may discriminate in the provision of emergency medical services on the basis of race, sex, color, creed, or prior inquiry as to ability to pay.
- (2) This [chapter] <u>part</u> does not authorize or require medical assistance or transportation over the objection of an individual on religious grounds.

[26-8a-502.] <u>26B-4-127.</u> Illegal activity.

- 913 (1) Except as provided in Section [26-8a-308] <u>26B-2-322</u> or [26-8b-201] <u>26B-X-XXX</u> 914 , a person may not:
 - (a) practice or engage in the practice, represent that the person is practicing or engaging in the practice, or attempt to practice or engage in the practice of any activity that requires a license, certification, or designation under this [chapter] part unless that person is licensed, certified, or designated under this [chapter] part; or
 - (b) offer an emergency medical service that requires a license, certification, or designation under this [chapter] part unless the person is licensed, certified, or designated under this [chapter] part.
 - (2) A person may not advertise or represent that the person holds a license, certification, or designation required under this [chapter] part, unless that person holds the license, certification, or designation under this [chapter] part.
 - (3) A person may not employ or permit any employee to perform any service for which a license or certification is required by this [chapter] part, unless the person

927	performing the service possesses the required license or certification under this [chapter]
928	part.
929	(4) A person may not wear, display, sell, reproduce, or otherwise use any Utah
930	Emergency Medical Services insignia without authorization from the department.
931	(5) A person may not reproduce or otherwise use materials developed by the
932	department for licensure or certification testing or examination without authorization from the
933	department.
934	(6) A person may not willfully summon an ambulance or emergency response vehicle
935	or report that one is needed when the person knows that the ambulance or emergency
936	response vehicle is not needed.
937	(7) A person who violates this section is subject to Section [26-23-6] <u>26B-X-XXX</u> .
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939	[26-8a-502.1.] <u>26B-4-128.</u> Prohibition on the use of "911".
940	(1) As used in this section:
941	(a) "Emergency services" means services provided by a person in response to an
942	emergency.
943	(b) "Emergency services" includes:
944	(i) fire protection services;
945	(ii) paramedic services;
946	(iii) law enforcement services;
947	(iv) 911 ambulance or paramedic services[, as defined in Section 26-8a-102]; and
948	(v) any other emergency services.
949	(2) A person may not use "911" or other similar sequence of numbers in the person's
950	name with the purpose to deceive the public that the person operates or represents
951	emergency services, unless the person is authorized to provide emergency services.
952	(3) A violation of Subsection (2) is:
953	(a) a class C misdemeanor; and
954	(b) subject to a fine of up to \$500 per violation.
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956	[26-8a-503.] <u>26B-4-129.</u> Discipline of emergency medical services personnel.
957	(1) The department may refuse to issue a license or renewal, or revoke, suspend,

restrict, or place on probation an individual's license if:

- (a) the individual does not meet the qualifications for licensure under Section 959 960 [26-8a-302] 26B-2-316;
 - (b) the individual has engaged in conduct, as defined by committee rule, that:
- (i) is unprofessional: 962

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- (ii) is adverse to the public health, safety, morals, or welfare; or
- 964 (iii) would adversely affect public trust in the emergency medical service system:
- (c) the individual has violated Section [26-8a-502] 26B-8a-327 or other provision of 965 this [chapter] part; 966
 - (d) the individual has violated Section 58-1-509;
 - (e) a court of competent jurisdiction has determined the individual to be mentally incompetent for any reason; or
 - (f) the individual is unable to provide emergency medical services with reasonable skill and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated.
 - (2) (a) An action to revoke, suspend, restrict, or place a license on probation shall be done in:
 - (i) consultation with the peer review board created in Section [26-8a-105] 26B-1-XXX ; and
 - (ii) accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) Notwithstanding Subsection (2)(a), the department may issue a cease and desist order under Section [26-8a-507] 26B-2-333 to immediately suspend an individual's license pending an administrative proceeding to be held within 30 days if there is evidence to show that the individual poses a clear, immediate, and unjustifiable threat or potential threat to the public health, safety, or welfare.
 - (3) An individual whose license has been suspended, revoked, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with any conditions imposed upon the license by statute, committee rule, or the terms of the suspension, revocation, or restriction.
 - (4) In addition to taking disciplinary action under Subsection (1), the department may

991	impose sanctions in accorda	nce with Section	$[\frac{26-23-6}{}]$	<u>26B-X-XXX</u>
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[26-8a-504.] <u>26B-4-130.</u> Discipline of designated and licensed providers.

- (1) The department may refuse to issue a license or designation or a renewal, or revoke, suspend, restrict, or place on probation, an emergency medical service provider's license or designation if the provider has:
 - (a) failed to abide by terms of the license or designation;
 - (b) violated statute or rule;
 - (c) failed to provide services at the level or in the exclusive geographic service area required by the license or designation;
 - (d) failed to submit a renewal application in a timely fashion as required by department rule;
 - (e) failed to follow operational standards established by the committee; or
 - (f) committed an act in the performance of a professional duty that endangered the public or constituted gross negligence.
 - (2) (a) An action to revoke, suspend, restrict, or place a license or designation on probation shall be done in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) Notwithstanding Subsection (2)(a), the department may issue a cease and desist order under Section [26-8a-507] <u>26B-2-333</u> to immediately suspend a license or designation pending an administrative proceeding to be held within 30 days if there is evidence to show that the provider or facility poses a clear, immediate, and unjustifiable threat or potential threat to the public health, safety, or welfare.
 - (3) In addition to taking disciplinary action under Subsection (1), the department may impose sanctions in accordance with Section [26-23-6] 26B-X-XXX.

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[26-8a-505.] <u>26B-4-131.</u> Service interruption or cessation -- Receivership -- Default coverage -- Notice.

(1) Acting in the public interest, the department may petition the district court where an ambulance or paramedic provider operates or the district court with jurisdiction in Salt Lake County to appoint the department or an independent receiver to continue the operations of a provider upon any one of the following conditions:

- 1023 (a) the provider ceases or intends to cease operations; 1024 (b) the provider becomes insolvent; (c) the department has initiated proceedings to revoke the provider's license and has 1025 1026 determined that the lives, health, safety, or welfare of the population served within the provider's exclusive geographic service area are endangered because of the provider's 1027 1028 action or inaction pending a full hearing on the license revocation; or 1029 (d) the department has revoked the provider's license and has been unable to adequately arrange for another provider to take over the provider's exclusive geographic 1030 1031 service area. 1032 (2) If a licensed or designated provider ceases operations or is otherwise unable to 1033 provide services, the department may arrange for another licensed provider to provide 1034 services on a temporary basis until a license is issued. 1035 (3) A licensed provider shall give the department 30 days notice of its intent to cease 1036 operations. 1037 1038 [26-8a-506.] 26B-4-132. Investigations for enforcement of [chapter] part. 1039 (1) The department may, for the purpose of ascertaining compliance with the 1040 provisions of this [chapter] part, enter and inspect on a routine basis the business premises 1041 and equipment of a person: 1042 (a) with a designation, permit, or license; or 1043 (b) who holds himself out to the general public as providing a service for which a designation, permit, or license is required under Section [26-8a-301] 26B-2-350. 1044 1045 (2) Before conducting an inspection under Subsection (1), the department shall, after 1046 identifying the person in charge: 1047 (a) give proper identification; (b) describe the nature and purpose of the inspection; and 1048 1049 (c) if necessary, explain the authority of the department to conduct the inspection.
 - (a) inspect records, equipment, and vehicles; and
 - (b) interview personnel.

meeting the requirements of Subsection (2):

(4) An inspection conducted under Subsection (1) shall be during regular operational

(3) In conducting an inspection under Subsection (1), the department may, after

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1057	[26-8a-507.] <u>26B-4-133.</u> Cease and desist orders.
1058	The department may issue a cease and desist order to any person who:
1059	(1) may be disciplined under Section [26-8a-503 or 26-8a-504] <u>26B-2-329 or</u>
1060	<u>26B-2-330</u> ; or
1061	(2) otherwise violates this [chapter] part or any rules adopted under this [chapter]
1062	part
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1064	[26-8a-601.] <u>26B-4-134.</u> Persons and activities exempt from civil liability.
1065	(1) (a) Except as provided in Subsection (1)(b), a licensed physician, physician's
1066	assistant, or licensed registered nurse who, gratuitously and in good faith, gives oral or
1067	written instructions to any of the following is not liable for any civil damages as a result of
1068	issuing the instructions:
1069	(i) an individual licensed or certified under Section [26-8a-302] 26B-2-316;
1070	(ii) an individual who uses a fully automated external defibrillator, as defined in Section
1071	[26-8b-102] <u>26B-X-XXX</u> ; or
1072	(iii) an individual who administers CPR, as defined in Section [26-8b-102] <u>26B-X-XXX</u>
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1074	(b) The liability protection described in Subsection (1)(a) does not apply if the
1075	instructions given were the result of gross negligence or willful misconduct.
1076	(2) An individual licensed or certified under Section [26-8a-302] 26B-2-316, during
1077	either training or after licensure or certification, a licensed physician, a physician assistant, or
1078	a registered nurse who, gratuitously and in good faith, provides emergency medical
1079	instructions or renders emergency medical care authorized by this [chapter] part is not liable
1080	for any civil damages as a result of any act or omission in providing the emergency medical
1081	instructions or medical care, unless the act or omission is the result of gross negligence or
1082	willful misconduct.
1083	(3) An individual licensed or certified under Section [26-8a-302] <u>26B-2-316</u> is not
1084	subject to civil liability for failure to obtain consent in rendering emergency medical services
1085	authorized by this [chapter] part to any individual who is unable to give his consent,
1086	regardless of the individual's age, where there is no other person present legally authorized

to consent to emergency medical care, provided that the licensed individual acted in good faith.

- (4) A principal, agent, contractor, employee, or representative of an agency, organization, institution, corporation, or entity of state or local government that sponsors, authorizes, supports, finances, or supervises any functions of an individual licensed or certified under Section [26-8a-302] 26B-2-316 is not liable for any civil damages for any act or omission in connection with the sponsorship, authorization, support, finance, or supervision of the licensed or certified individual where the act or omission occurs in connection with the licensed or certified individual's training or occurs outside a hospital where the life of a patient is in immediate danger, unless the act or omission is inconsistent with the training of the licensed or certified individual, and unless the act or omission is the result of gross negligence or willful misconduct.
- (5) A physician or physician assistant who gratuitously and in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to a critical care unit in another hospital is not liable for any civil damages as a result of such transfer where:
- (a) sound medical judgment indicates that the patient's medical condition is beyond the care capability of the transferring hospital or the medical community in which that hospital is located; and
- (b) the physician or physician assistant has secured an agreement from the receiving facility to accept and render necessary treatment to the patient.
- (6) An individual who is a registered member of the National Ski Patrol System (NSPS) or a member of a ski patrol who has completed a course in winter emergency care offered by the NSPS combined with CPR for medical technicians offered by the American Red Cross or American Heart Association, or an equivalent course of instruction, and who in good faith renders emergency care in the course of ski patrol duties is not liable for civil damages as a result of any act or omission in rendering the emergency care, unless the act or omission is the result of gross negligence or willful misconduct.
- (7) An emergency medical service provider who, in good faith, transports an individual against his will but at the direction of a law enforcement officer pursuant to Section 62A-15-629 is not liable for civil damages for transporting the individual.

[26-8a-602.] <u>26B-4-135.</u> Notification of air ambulance policies and charges.

- 1119 (1) For any patient who is in need of air medical transport provider services, an emergency medical service provider shall:
- (a) provide the patient or the patient's representative with the information described in Subsection [26-8a-107] 26B-1-XXX (7)(a) before contacting an air medical transport provider; and
- 1124 (b) if multiple air medical transport providers are capable of providing the patient with 1125 services, provide the patient or the patient's representative an opportunity to choose the air 1126 medical transport provider.
 - (2) Subsection (1) does not apply if the patient:
- (a) is unconscious and the patient's representative is not physically present with the patient; or
- (b) is unable, due to a medical condition, to make an informed decision about the choice of an air medical transport provider, and the patient's representative is not physically present with the patient.

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- [26-8a-603] 26B-4-136. Volunteer Emergency Medical Service Personnel
 Health Insurance Program -- Creation -- Administration -- Eligibility -- Benefits -Rulemaking -- Advisory board.
- 1137 (1) As used in this section:
- (a) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
 - (b) "Local government entity" means a political subdivision that:
- 1141 (i) is licensed as a ground ambulance provider under Part 4, Ambulance and 1142 Paramedic Providers; and
 - (ii) as of January 1, 2022, does not offer health insurance benefits to volunteer emergency medical service personnel.
- 1145 (c) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103.
- 1147 (d) "Political subdivision" means a county, a municipality, a limited purpose
 1148 government entity described in Title 17B, Limited Purpose Local Government Entities Local
 1149 Districts, or Title 17D, Limited Purpose Local Government Entities Other Entities, or an
 1150 entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation

1151 Act. 1152 (e) "Qualifying association" means an association that represents two or more political subdivisions in the state. 1153 1154 (2) The Volunteer Emergency Medical Service Personnel Health Insurance Program 1155 shall promote recruitment and retention of volunteer emergency medical service personnel 1156 by making health insurance available to volunteer emergency medical service personnel. 1157 (3) The department shall contract with a qualifying association to create, implement, and administer the Volunteer Emergency Medical Service Personnel Health Insurance 1158 1159 Program described in this section. 1160 (4) Participation in the program is limited to emergency medical service personnel 1161 who: 1162 (a) are licensed under Section [26-8a-302] 26B-2-316 and are able to perform all 1163 necessary functions associated with the license; 1164 (b) provide emergency medical services under the direction of a local governmental 1165 entity: 1166 (i) by responding to 20% of calls for emergency medical services in a rolling 1167 twelve-month period; 1168 (ii) within a county of the third, fourth, fifth, or sixth class; and (iii) as a volunteer under the Fair Labor Standards Act, in accordance with 29 C.F.R. 1169 1170 Sec. 553.106: 1171 (c) are not eligible for a health benefit plan through an employer or a spouse's 1172 employer; 1173 (d) are not eligible for medical coverage under a government sponsored healthcare 1174 program; and 1175 (e) reside in the state. 1176 (5) (a) A participant in the program is eligible to participate in PEHP in accordance 1177 with Subsection (5)(b) and Subsection 49-20-201(3). (b) Benefits available to program participants under PEHP are limited to health 1178 insurance that: 1179 1180 (i) covers the program participant and the program participant's eligible dependents 1181 on a July 1 plan year;

(ii) accepts enrollment during an open enrollment period or for a special enrollment

event, including the	e initial eligibility of	a program	participant:
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- (iii) if the program participant is no longer eligible for benefits, terminates on the last day of the last month for which the individual is a participant in the Volunteer Emergency Medical Service Personnel Health Insurance Program; and
 - (iv) is not subject to continuation rights under state or federal law.
 - (6) (a) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to define additional criteria regarding benefit design and eligibility for the program.
 - (b) The department shall convene an advisory board:
 - (i) to advise the department on making rules under Subsection (6)(a); and
 - (ii) that includes representation from at least the following entities:
 - (A) the qualifying association that receives the contract under Subsection (3); and
- 1195 (B) PEHP.
- 1196 (7) For purposes of this section, the qualifying association that receives the contract 1197 under Subsection (3) shall be considered the public agency for whom the program participant 1198 is volunteering under 29 C.F.R. Sec. 553.101.

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[26-8c-102.] 26B-4-137. EMS Personnel Licensure Interstate Compact.

EMS PERSONNEL LICENSURE INTERSTATE COMPACT SECTION 1. PURPOSE

In order to protect the public through verification of competency and ensure accountability for patient care related activities all states license emergency medical services (EMS) personnel, such as emergency medical technicians (EMTs), advanced EMTs and paramedics. This Compact is intended to facilitate the day to day movement of EMS personnel across state boundaries in the performance of their EMS duties as assigned by an appropriate authority and authorize state EMS offices to afford immediate legal recognition to EMS personnel licensed in a member state. This Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel and that such state regulation shared among the member states will best protect public health and safety. This Compact is designed to achieve the following purposes and objectives:

1. Increase public access to EMS personnel;

- 1215 2. Enhance the states' ability to protect the public's health and safety, especially 1216 patient safety;
- 1217 3. Encourage the cooperation of member states in the areas of EMS personnel 1218 licensure and regulation;
- 1219 4. Support licensing of military members who are separating from an active duty tour 1220 and their spouses;
- 1221 5. Facilitate the exchange of information between member states regarding EMS 1222 personnel licensure, adverse action and significant investigatory information:
- 1223 6. Promote compliance with the laws governing EMS personnel practice in each 1224 member state; and
- 1225 7. Invest all member states with the authority to hold EMS personnel accountable 1226 through the mutual recognition of member state licenses.

SECTION 2. DEFINITIONS

In this compact:

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- A. "Advanced Emergency Medical Technician (AEMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.
- B. "Adverse Action" means: any administrative, civil, equitable or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions and state court judgments enforcing adverse actions by the state EMS authority.
- C. "Alternative program" means: a voluntary, non-disciplinary substance abuse recovery program approved by a state EMS authority.
- D. "Certification" means: the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.
- 1243 E. "Commission" means: the national administrative body of which all states that have 1244 enacted the compact are members.
- F. "Emergency Medical Technician (EMT)" means: an individual licensed with 1245 cognitive knowledge and a scope of practice that corresponds to that level in the National 1246

- 1247 EMS Education Standards and National EMS Scope of Practice Model.
- G. "Home State" means: a member state where an individual is licensed to practice emergency medical services.
- H. "License" means: the authorization by a state for an individual to practice as an EMT, AEMT, paramedic, or a level in between EMT and paramedic.
- I. "Medical Director" means: a physician licensed in a member state who is accountable for the care delivered by EMS personnel.
 - J. "Member State" means: a state that has enacted this compact.
- 1255 K. "Privilege to Practice" means: an individual's authority to deliver emergency 1256 medical services in remote states as authorized under this compact.
- L. "Paramedic" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.
 - M. "Remote State" means: a member state in which an individual is not licensed.
- N. "Restricted" means: the outcome of an adverse action that limits a license or the privilege to practice.
 - O. "Rule" means: a written statement by the interstate Commission promulgated pursuant to Section 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact; or is an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.
 - P. "Scope of Practice" means: defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.
- 1272 Q. "Significant Investigatory Information" means:
- 1. investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or
- 2. investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and

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- 1279 had an opportunity to respond. R. "State" means: means any state, commonwealth, district, or territory of the United 1280 States. 1281 1282 S. "State EMS Authority" means: the board, office, or other agency with the legislative 1283 mandate to license EMS personnel. SECTION 3. HOME STATE LICENSURE 1284 A. Any member state in which an individual holds a current license shall be deemed a 1285 home state for purposes of this compact. 1286 1287 B. Any member state may require an individual to obtain and retain a license to be 1288 authorized to practice in the member state under circumstances not authorized by the 1289 privilege to practice under the terms of this compact. 1290 C. A home state's license authorizes an individual to practice in a remote state under 1291 the privilege to practice only if the home state: 1. Currently requires the use of the National Registry of Emergency Medical 1292 1293 Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and 1294 paramedic levels; 1295 2. Has a mechanism in place for receiving and investigating complaints about 1296 individuals: 1297 3. Notifies the Commission, in compliance with the terms herein, of any adverse 1298 action or significant investigatory information regarding an individual; 1299 4. No later than five years after activation of the Compact, requires a criminal 1300 background check of all applicants for initial licensure, including the use of the results of 1301 fingerprint or other biometric data checks compliant with the requirements of the Federal 1302 Bureau of Investigation with the exception of federal employees who have suitability 1303 determination in accordance with 5 C.F.R. Sec. 731.202 and submit documentation of such 1304 as promulgated in the rules of the Commission; and
 - 5. Complies with the rules of the Commission.

SECTION 4. COMPACT PRIVILEGE TO PRACTICE

- A. Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with Section 3.
- 1309 B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must: 1310

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- 2. Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and
- 3. Practice under the supervision of a medical director.
- 1316 C. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.
 - D. Except as provided in Section 4 subsection C, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action it shall promptly notify the home state and the Commission.
 - E. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.
 - F. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

SECTION 5. CONDITIONS OF PRACTICE IN A REMOTE STATE

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the Commission, and under the following circumstances:

- 1. The individual originates a patient transport in a home state and transports the patient to a remote state;
- 2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;
- 3. The individual enters a remote state to provide patient care and/or transport within that remote state;
 - 4. The individual enters a remote state to pick up a patient and provide care and

1343	transport to a third member state;
1344	5. Other conditions as determined by rules promulgated by the commission.
1345	SECTION 6. RELATIONSHIP TO EMERGENCY
1346	MANAGEMENT ASSISTANCE COMPACT
1347	Upon a member state's governor's declaration of a state of emergency or disaster that
1348	activates the Emergency Management Assistance Compact (EMAC), all relevant terms and
1349	provisions of EMAC shall apply and to the extent any terms or provisions of this Compact
1350	conflicts with EMAC, the terms of EMAC shall prevail with respect to any individual practicing
1351	in the remote state in response to such declaration.
1352	SECTION 7. VETERANS, SERVICE MEMBERS SEPARATING
1353	FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES
1354	A. Member states shall consider a veteran, active military service member, and
1355	member of the National Guard and Reserves separating from an active duty tour, and a
1356	spouse thereof, who holds a current valid and unrestricted NREMT certification at or above
1357	the level of the state license being sought as satisfying the minimum training and
1358	examination requirements for such licensure.
1359	B. Member states shall expedite the processing of licensure applications submitted by
1360	veterans, active military service members, and members of the National Guard and Reserves
1361	separating from an active duty tour, and their spouses.
1362	C. All individuals functioning with a privilege to practice under this Section remain
1363	subject to the Adverse Actions provisions of Section VIII.
1364	SECTION 8. ADVERSE ACTIONS
1365	A. A home state shall have exclusive power to impose adverse action against an
1366	individual's license issued by the home state.
1367	B. If an individual's license in any home state is restricted or suspended, the
1368	individual shall not be eligible to practice in a remote state under the privilege to practice until
1369	the individual's home state license is restored.
1370	1. All home state adverse action orders shall include a statement that the individual's
1371	compact privileges are inactive. The order may allow the individual to practice in remote
1372	states with prior written authorization from both the home state and remote state's EMS
1373	authority.

2. An individual currently subject to adverse action in the home state shall not practice

in any remote state without prior written authorization from both the home state and remote 1375 1376 state's EMS authority.

- C. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the Commission in accordance with the rules of the Commission.
- D. A remote state may take adverse action on an individual's privilege to practice within that state.
- E. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.
- F. A home state's EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.
- G. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

SECTION 9. ADDITIONAL POWERS INVESTED IN A MEMBER STATE'S EMS AUTHORITY

A member state's EMS authority, in addition to any other powers granted under state law, is authorized under this compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's EMS authority for the attendance and testimony of witnesses, and/or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

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2. Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

SECTION 10. ESTABLISHMENT OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

- A. The Compact states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.
 - 1. The Commission is a body politic and an instrumentality of the Compact states.
- 2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
 - 3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.
 - B. Membership, Voting, and Meetings

- 1. Each member state shall have and be limited to one (1) delegate. The responsible official of the state EMS authority or his designee shall be the delegate to this Compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the Governor of the state will determine which entity will be responsible for assigning the delegate.
- 2. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
- 3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.
- 4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section XII.
 - 5. The Commission may convene in a closed, non-public meeting if the Commission

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- a. Non-compliance of a member state with its obligations under the Compact;
- b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
 - c. Current, threatened, or reasonably anticipated litigation;
 - d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;
- e. Accusing any person of a crime or formally censuring any person;
- f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
 - g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - h. Disclosure of investigatory records compiled for law enforcement purposes;
 - i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
 - j. Matters specifically exempted from disclosure by federal or member state statute.
 - 6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.
 - C. The Commission shall, by a majority vote of the delegates, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:
 - 1. Establishing the fiscal year of the Commission;
 - 2. Providing reasonable standards and procedures:
 - a. for the establishment and meetings of other committees; and

- b. governing any general or specific delegation of any authority or function of the 1471 1472 Commission;
- 3. Providing reasonable procedures for calling and conducting meetings of the 1473 1474 Commission, ensuring reasonable advance notice of all meetings, and providing an 1475 opportunity for attendance of such meetings by interested parties, with enumerated 1476 exceptions designed to protect the public's interest, the privacy of individuals, and proprietary 1477 information, including trade secrets. The Commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as 1478 1479 practicable, the Commission must make public a copy of the vote to close the meeting 1480 revealing the vote of each member with no proxy votes allowed;
- 1481 4. Establishing the titles, duties and authority, and reasonable procedures for the 1482 election of the officers of the Commission:
 - 5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;
 - 6. Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;
 - 7. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations:
 - 8. The Commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any.
 - 9. The Commission shall maintain its financial records in accordance with the bylaws.
 - 10. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.
 - D. The Commission shall have the following powers:
 - 1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;
 - 2. To bring and prosecute legal proceedings or actions in the name of the

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- 1503 Commission, provided that the standing of any state EMS authority or other regulatory body 1504 responsible for EMS personnel licensure to sue or be sued under applicable law shall not be 1505 affected;
 - 3. To purchase and maintain insurance and bonds;
- 4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;
- 5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
- 6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
- 7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;
- 8. To sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
 - To establish a budget and make expenditures;
- 1523 10. To borrow money;

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- 11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
- 1527 12. To provide and receive information from, and to cooperate with, law enforcement agencies;
- 1529 13. To adopt and use an official seal; and
- 1530 14. To perform such other functions as may be necessary or appropriate to achieve 1531 the purposes of this Compact consistent with the state regulation of EMS personnel licensure 1532 and practice.
 - E. Financing of the Commission
 - 1. The Commission shall pay, or provide for the payment of, the reasonable expenses

of its establishment, organization, and ongoing activities.

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- 1536 2. The Commission may accept any and all appropriate revenue sources, donations, 1537 and grants of money, equipment, supplies, materials, and services.
- 1538 3. The Commission may levy on and collect an annual assessment from each 1539 member state or impose fees on other parties to cover the cost of the operations and 1540 activities of the Commission and its staff, which must be in a total amount sufficient to cover 1541 its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be 1542 1543 determined by the Commission, which shall promulgate a rule binding upon all member 1544 states.
 - 4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.
 - 5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.
 - F. Qualified Immunity, Defense, and Indemnification
 - 1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred. or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
 - 2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission

employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 11. COORDINATED DATABASE

- A. The Commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.
- B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this compact is applicable as required by the rules of the Commission, including:
 - 1. Identifying information;
- 1589 2. Licensure data;

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- 3. Significant investigatory information;
- 4. Adverse actions against an individual's license;
- 5. An indicator that an individual's privilege to practice is restricted, suspended or revoked;
 - 6. Non-confidential information related to alternative program participation;
 - 7. Any denial of application for licensure, and the reason(s) for such denial; and
 - 8. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.
 - C. The coordinated database administrator shall promptly notify all member states of

any adverse action taken against, or significant investigative information on, any individual in a member state.

- D. Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.
 - E. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated database.

SECTION 12. RULEMAKING

- A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.
- B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any member state.
- 1614 C. Rules or amendments to the rules shall be adopted at a regular or special meeting 1615 of the Commission.
 - D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:
 - 1. On the website of the Commission; and
- 2. On the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules.
 - E. The Notice of Proposed Rulemaking shall include:
- 1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
 - 2. The text of the proposed rule or amendment and the reason for the proposed rule;
 - 3. A request for comments on the proposed rule from any interested person; and
- 4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.
- F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

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- 1631 G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
 - 1. At least twenty-five (25) persons;

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- 2. A governmental subdivision or agency; or
- 1635 3. An association having at least twenty-five (25) members.
- H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.
 - 1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.
 - 2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
 - 3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.
 - 4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.
 - I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.
 - J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
 - K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.
 - L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be

retroactively applied to the rule as soon as reasonably possible, in no event later than ninety
(90) days after the effective date of the rule. For the purposes of this provision, an
emergency rule is one that must be adopted immediately in order to:

- 1. Meet an imminent threat to public health, safety, or welfare;
- 2. Prevent a loss of Commission or member state funds;
- 3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
 - 4. Protect public health and safety.
 - M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

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- 1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.
- 2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Commission.
- 3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.
 - B. Default, Technical Assistance, and Termination

- 1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the Commission shall:
- a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and
 - b. Provide remedial training and specific technical assistance regarding the default.
 - 2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
 - 3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
 - 4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
 - 5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the Commission and the defaulting state.
 - 6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
 - C. Dispute Resolution

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- 1722 1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.
- 1725 2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

- 1728 1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
 - 2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
 - 3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 14. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

- A. The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.
- B. Any state that joins the compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the compact becomes law in that state.
- C. Any member state may withdraw from this compact by enacting a statute repealing the same.
- 1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.
- 2. Withdrawal shall not affect the continuing requirement of the withdrawing state's EMS authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.
- D. Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member

state and a non-member state that does not conflict with the provisions of this compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 15. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

[26-8a-401.] <u>26B-4-150.</u> State regulation of emergency medical services market -- License term.

- (1) To ensure emergency medical service quality and minimize unnecessary duplication, the department shall regulate the emergency medical services market by creating and operating a statewide system that:
- (a) consists of exclusive geographic service areas as provided in Section [26-8a-402]
 26B-2-351; and
 - (b) establishes maximum rates as provided in Section [26-8a-403] <u>26B-2-352</u>.
 - (2) A license issued or renewed under this part is valid for four years.

[26-8a-402.] <u>26B-4-151</u> Exclusive geographic service areas.

- (1) Each ground ambulance provider license issued under this part shall be for an exclusive geographic service area as described in the license. Only the licensed ground ambulance provider may respond to an ambulance request that originates within the provider's exclusive geographic service area, except as provided in Subsection (5) and Section [26-8a-416] 26B-2-370.
- (2) Each paramedic provider license issued under this part shall be for an exclusive geographic service area as described in the license. Only the licensed paramedic provider may respond to a paramedic request that originates within the exclusive geographic service area, except as provided in Subsection (6) and Section [26-8a-416] 26B-2-370.
- (3) Nothing in this section may be construed as either requiring or prohibiting that the formation of boundaries in a given location be the same for a licensed paramedic provider

1791	and a licensed ambulance provider.
1792	(4) (a) A licensed ground ambulance or paramedic provider may, as necessary, enter
1793	into a mutual aid agreement to allow another licensed provider to give assistance in times of

- unusual demand, as that term is defined by the committee in rule.
- 1795 (b) A mutual aid agreement shall include a formal written plan detailing the type of assistance and the circumstances under which it would be given.
- 1797 (c) The parties to a mutual aid agreement shall submit a copy of the agreement to the department.
 - (d) Notwithstanding this Subsection (4), a licensed provider may not subcontract with another entity to provide services in the licensed provider's exclusive geographic service area.
 - (5) Notwithstanding Subsection (1), a licensed ground ambulance provider may respond to an ambulance request that originates from the exclusive geographic area of another provider:
 - (a) pursuant to a mutual aid agreement;
 - (b) to render assistance on a case-by-case basis to that provider; and
 - (c) as necessary to meet needs in time of disaster or other major emergency.
- 1808 (6) Notwithstanding Subsection (2), a licensed paramedic provider may respond to a paramedic request that originates from the exclusive geographic area of another provider:
 - (a) pursuant to a mutual aid agreement;
 - (b) to render assistance on a case-by-case basis to that provider; and
- (c) as necessary to meet needs in time of disaster or other major emergency.
- 1813 (7) The department may, upon the renewal of a license, align the boundaries of an exclusive geographic area with the boundaries of a political subdivision:
 - (a) if the alignment is practical and in the public interest;
- 1816 (b) if each licensed provider that would be affected by the alignment agrees to the alignment; and
 - (c) taking into consideration the requirements of:
- 1819 (i) Section 11-48-103; and

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1820 (ii) Section [26-8a-408] <u>26B-2-362</u>.

1822 [26-8a-403.] <u>26B-4-152.</u> Establishment of maximum rates.

1823 (1) The department shall, after receiving recommendations under Subsection (2), 1824 establish maximum rates for ground ambulance providers and paramedic providers that are just and reasonable. 1825 1826 (2) The committee may make recommendations to the department on the maximum 1827 rates that should be set under Subsection (1). (3) (a) The department shall prohibit ground ambulance providers and paramedic 1828 1829 providers from charging fees for transporting a patient when the provider does not transport 1830 the patient. 1831 (b) The provisions of Subsection (3)(a) do not apply to ambulance providers or 1832 paramedic providers in a geographic service area which contains a town as defined in Subsection 10-2-301(2)(f). 1833 1834 [26-8a-404.] 26B-4-153. Ground ambulance and paramedic licenses --1835 1836 Application and department review. 1837 (1) Except as provided in Section [26-8a-413] 26B-2-367, an applicant for a ground 1838 ambulance or paramedic license shall apply to the department for a license only by: 1839 (a) submitting a completed application: 1840 (b) providing information in the format required by the department; and 1841 (c) paying the required fees, including the cost of the hearing officer. 1842 (2) The department shall make rules establishing minimum qualifications and 1843 requirements for: 1844 (a) personnel; 1845 (b) capital reserves; 1846 (c) equipment; 1847 (d) a business plan; 1848 (e) operational procedures; 1849 (f) medical direction agreements; 1850 (g) management and control; and 1851 (h) other matters that may be relevant to an applicant's ability to provide ground 1852 ambulance or paramedic service.

service shall be for all ground ambulance services or paramedic services arising within the

(3) An application for a license to provide ground ambulance service or paramedic

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geographic service area, except that an applicant may apply for a license for less than all ground ambulance services or all paramedic services arising within an exclusive geographic area if it can demonstrate how the remainder of that area will be served.

- (4) (a) A ground ambulance service licensee may apply to the department for a license to provide a higher level of service as defined by department rule if the application includes:
- (i) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director:
 - (ii) an assessment of field performance by the applicant's off-line director; and
- (iii) an updated plan of operation demonstrating the ability of the applicant to provide the higher level of service.
- (b) If the department determines that the applicant has demonstrated the ability to provide the higher level of service in accordance with Subsection (4)(a), the department shall issue a revised license reflecting the higher level of service and the requirements of Section [26-8a-408] 26B-2-362 do not apply.
 - (c) A revised license issued under Subsection (4)(b):
 - (i) may only affect the level of service that the licensee may provide; and
 - (ii) may not affect any other terms, conditions, or limitations of the original license.
- (5) Upon receiving a completed application and the required fees, the department shall review the application and determine whether the application meets the minimum qualifications and requirements for licensure.
- (6) The department may deny an application if it finds that it contains any materially false or misleading information, is incomplete, or if the application demonstrates that the applicant fails to meet the minimum qualifications and requirements for licensure under Subsection (2).
- (7) If the department denies an application, it shall notify the applicant in writing setting forth the grounds for the denial. A denial may be appealed under Title 63G, Chapter 4, Administrative Procedures Act.

[26-8a-405.] <u>26B-4-154.</u> Ground ambulance and paramedic licenses -- Agency notice of approval.

(1) Beginning January 1, 2004, if the department determines that the application

- meets the minimum requirements for licensure under Section [26-8a-404] <u>26B-2-353</u>, the department shall issue a notice of the approved application to the applicant.
- (2) A current license holder responding to a request for proposal under Section
 [26-8a-405.2] 26B-2-356 is considered an approved applicant for purposes of Section
 [26-8a-405.2] 26B-2-356 if the current license holder, prior to responding to the request for proposal, submits the following to the department:
- (a) the information described in Subsections [26-8a-404] <u>26B-2-353</u> (4)(a)(i) through (iii); and
 - (b) (i) if the license holder is a private entity, a financial statement, a pro forma budget and necessary letters of credit demonstrating a financial ability to expand service to a new service area; or
 - (ii) if the license holder is a governmental entity, a letter from the governmental entity's governing body demonstrating the governing body's willingness to financially support the application.

[26-8a-405.1.] <u>26B-4-155.</u> Selection of provider by political subdivision.

- (1) (a) Only an applicant approved under Section [26-8a-405] 26B-2-354 may respond to a request for a proposal issued in accordance with Section 26-8a-405.2 or Section [26-8a-405.4] 26B-2-358 by a political subdivision.
- (b) A response to a request for proposal is subject to the maximum rates established by the department under Section [26-8a-403] 26B-2-352 .
- (c) A political subdivision may award a contract to an applicant in response to a request for proposal:
 - (i) in accordance with Section [26-8a-405.2] <u>26B-2-356</u>; and
 - (ii) subject to Subsections (2) and (3).
- (2) (a) The department shall issue a license to an applicant selected by a political subdivision under Subsection (1) unless the department finds that issuing a license to that applicant would jeopardize the health, safety, and welfare of the citizens of the geographic service area.
 - (b) A license issued under this Subsection (2):
- (i) is for the exclusive geographic service area approved by the department in accordance with Subsection [26-8a-405.2] <u>26B-2-356</u> (2);

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1919 (ii) is valid for four years; 1920 (iii) is not subject to a request for license from another applicant under the provisions of Sections [26-8a-406] 26B-2-360 through [26-8a-409] 26B-2-363 during the four-year 1921 1922 term, unless the applicant's license is revoked under Section [26-8a-504] 26B-2-330; 1923 (iv) is subject to revocation or revision under Subsection (3)(d); and 1924 (v) is subject to supervision by the department under Sections [26-8a-503] 26B-2-330 1925 and [26-8a-504] 26B-2-331. 1926 (3) Notwithstanding Subsection (2)(b), a political subdivision may terminate a contract 1927 described in Subsection (1)(c), with or without cause, if: 1928 (a) the contract: (i) is entered into on or after May 5, 2021; and 1929 1930 (ii) allows an applicant to provide 911 ambulance services; (b) the political subdivision provides written notice to the applicant described in 1931 1932 Subsection (3)(a)(ii) and the department: 1933 (i) at least 18 months before the day on which the contract is terminated; or 1934 (ii) within a period of time shorter than 18 months before the day on which the 1935 contract is terminated, if otherwise agreed to by the applicant and the department; 1936 (c) the political subdivision selects another applicant to provide 911 ambulance 1937 services for the political subdivision in accordance with Section [26-8a-405.2] 26B-2-356; 1938 (d) the department: 1939 (i) revokes the license of the applicant described in Subsection (3)(a)(ii), or issues a 1940 new or revised license for the applicant described in Subsection (3)(a)(ii): 1941 (A) in order to remove the area that is subject to the contract from the applicant's exclusive geographic service area; and 1942 1943 (B) to take effect the day on which the contract is terminated; and 1944 (ii) issues a new or revised license for the applicant described in Subsection (3)(c): 1945 (A) in order to allow the applicant to provide 911 ambulance services for the area described in Subsection (3)(d)(i)(A); and 1946 1947 (B) to take effect the day on which the contract is terminated; and 1948 (e) the termination does not create an orphaned area. 1949 (4) Except as provided in Subsection [26-8a-405.3] 26B-2-357 (4)(a), the provisions

of Sections [26-8a-406] 26B-2-360 through [26-8a-409] 26B-2-363 do not apply to a

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- [26-8a-405.2.] <u>26B-4-156.</u> Selection of provider -- Request for competitive sealed proposal -- Public convenience and necessity.
- (1) (a) A political subdivision may contract with an applicant approved under Section [26-8a-404] 26B-2-353 to provide services for the geographic service area that is approved by the department in accordance with Subsection (2), if:
 - (i) the political subdivision complies with the provisions of this section and Section [26-8a-405.3] <u>26B-2-357</u> if the contract is for 911 ambulance or paramedic services; or
- 1960 (ii) the political subdivision complies with Sections [26-8a-405.3] <u>26B-2-357</u> and 1961 [26-8a-405.4] <u>26B-2-358</u>, if the contract is for non-911 services.
- (b) (i) The provisions of this section and Sections [26-8a-405.1] <u>26B-2-355</u>, [26-8a-405.3] <u>26B-2-357</u>, and [26-8a-405.4] <u>26B-2-358</u> do not require a political subdivision to issue a request for proposal for ambulance or paramedic services or non-911 services.
 - (ii) If a political subdivision does not contract with an applicant in accordance with this section and Section [26-8a-405.3] 26B-2-357, the provisions of Sections [26-8a-406] 26B-2-360 through [26-8a-409] 26B-2-363 apply to the issuance of a license for ambulance or paramedic services in the geographic service area that is within the boundaries of the political subdivision.
 - (iii) If a political subdivision does not contract with an applicant in accordance with this section, Section [26-8a-405.3] 26B-2-357 and Section [26-8a-405.4] 26B-2-358, a license for the non-911 services in the geographic service area that is within the boundaries of the political subdivision may be issued:
- 1975 (A) under the public convenience and necessity provisions of Sections [26-8a-406] 1976 26B-2-360 through [26-8a-409] 26B-2-363; or
- 1977 (B) by a request for proposal issued by the department under Section [26-8a-405.5] 1978 26B-2-359.
- (c) (i) [For purposes of] As used in this Subsection (1)(c):
- 1980 (A) "Fire district" means a local district under Title 17B, Limited Purpose Local Government Entities Local Districts, that:
 - (I) is located in a county of the first or second class; and

1983 (II) provides fire protection, paramedic, and emergency services.

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- 1984 (B) "Participating municipality" means a city or town whose area is partly or entirely included within a county service area or fire district. 1985
 - (C) "Participating county" means a county whose unincorporated area is partly or entirely included within a fire district.
 - (ii) A participating municipality or participating county may as provided in this section and Section [26-8a-405.3] 26B-2-357, contract with a provider for 911 ambulance or paramedic service.
 - (iii) If the participating municipality or participating county contracts with a provider for services under this section and Section [26-8a-405.3] 26B-2-357:
 - (A) the fire district is not obligated to provide the services that are included in the contract between the participating municipality or the participating county and the provider;
 - (B) the fire district may impose taxes and obligations within the fire district in the same manner as if the participating municipality or participating county were receiving all services offered by the fire district; and
 - (C) the participating municipality's and participating county's obligations to the fire district are not diminished.
 - (2) (a) The political subdivision shall submit the request for proposal and the exclusive geographic service area to be included in a request for proposal issued under Subsections (1)(a)(i) or (ii) to the department for approval prior to issuing the request for proposal. The department shall approve the request for proposal and the exclusive geographic service area:
 - (i) unless the geographic service area creates an orphaned area; and
 - (ii) in accordance with Subsections (2)(b) and (c).
 - (b) The exclusive geographic service area may:
 - (i) include the entire geographic service area that is within the political subdivision's boundaries;
 - (ii) include islands within or adjacent to other peripheral areas not included in the political subdivision that governs the geographic service area; or
- 2012 (iii) exclude portions of the geographic service area within the political subdivision's 2013 boundaries if another political subdivision or licensed provider agrees to include the excluded 2014 area within their license.

(c) The proposed geographic service area for 911 ambulance or paramedic service
shall demonstrate that non-911 ambulance or paramedic service will be provided in the
geographic service area, either by the current provider, the applicant, or some other method
acceptable to the department. The department may consider the effect of the proposed
geographic service area on the costs to the non-911 provider and that provider's ability to
provide only non-911 services in the proposed area.

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[26-8a-405.3.] <u>26B-4-157.</u> Use of competitive sealed proposals -- Procedure -- Appeal rights.

- 2024 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under 2025 Section [26-8a-405.2] 26B-2-356, or for non-911 services under Section [26-8a-405.4] 2026 26B-2-358, shall be solicited through a request for proposal and the provisions of this section.
 - (b) The governing body of the political subdivision shall approve the request for proposal prior to the notice of the request for proposals under Subsection (1)(c).
 - (c) Notice of the request for proposals shall be published:
- 2031 (i) by posting the notice for at least 20 days in at least five public places in the county; 2032 and
 - (ii) by posting the notice on the Utah Public Notice Website, created in Section 63A-16-601, for at least 20 days.
 - (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.
 - (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the political subdivision shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.
 - (ii) A political subdivision shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.
 - (c) Subsequent to the presubmission conference, the political subdivision may issue addenda to the request for proposals. An addenda to a request for proposal shall be finalized and posted by the political subdivision at least 45 days before the day on which the proposal must be submitted.
 - (d) Offerors to the request for proposals shall be accorded fair and equal treatment

with respect to any opportunity for discussion and revisions of proposals, and revisions may 2047 2048 be permitted after submission and before a contract is awarded for the purpose of obtaining 2049 best and final offers.

- 2050 (e) In conducting discussions, there shall be no disclosures of any information derived 2051 from proposals submitted by competing offerors.
 - (3) (a) (i) A political subdivision may select an applicant approved by the department under Section [26-8a-404] 26B-2-353 to provide 911 ambulance or paramedic services by contract to the most responsible offeror as defined in Section 63G-6a-103.
 - (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the political subdivision, taking into consideration price and the evaluation factors set forth in the request for proposal.
 - (b) The applicants who are approved under Section [26-8a-405] 26B-2-354 and who are selected under this section may be the political subdivision issuing the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.
 - (c) A political subdivision may reject all of the competitive proposals.
 - (4) In seeking competitive sealed proposals and awarding contracts under this section, a political subdivision:
 - (a) shall apply the public convenience and necessity factors listed in Subsections [26-8a-408] 26B-2-362 (2) through (6):
 - (b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;
 - (c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:
 - (i) requiring ambulance medical personnel to also be a firefighter; or
 - (ii) mandating that offerors use fire stations or dispatch services of the political subdivision;
 - (d) shall require an applicant to submit the proposal:
- 2076 (i) based on full cost accounting in accordance with generally accepted accounting 2077 principals; and
 - (ii) if the applicant is a governmental entity, in addition to the requirements of

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2079 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards 2080 and in compliance with the State of Utah Legal Compliance Audit Guide; and

- (e) shall set forth in the request for proposal:
- (i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such full cost accounting principles:
 - (ii) guidelines established to further competition and provider accountability; and
- (iii) a list of the factors that will be considered by the political subdivision in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:
- 2089 (A) response times;
 - (B) staging locations;
- 2091 (C) experience;

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- 2092 (D) quality of care; and
 - (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
- 2094 (5) (a) Notwithstanding any provision of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, the provisions of Title 63G, Chapter 6a, Utah Procurement Code. 2095 2096 apply to the procurement process required by this section, except as provided in Subsection (5)(c). 2097
 - (b) A procurement appeals panel described in Section 63G-6a-1702 shall have jurisdiction to review and determine an appeal of an offeror under this section.
 - (c) (i) An offeror may appeal the solicitation or award as provided by the political subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror may appeal under the provisions of Subsections (5)(a) and (b).
 - (ii) A procurement appeals panel described in Section 63G-6a-1702 shall determine whether the solicitation or award was made in accordance with the procedures set forth in this section and Section [26-8a-405.2] 26B-2-356.
 - (d) The determination of an issue of fact by the appeals board shall be final and conclusive unless arbitrary and capricious or clearly erroneous as provided in Section 63G-6a-1705.

[26-8a-405.4.] 26B-4-158. Non-911 provider -- Finding of meritorious complaint 2110

2111	Request for proposals.
2112	(1) (a) This section applies to a non-911 provider license under this [chapter] part.
2113	(b) The department shall, in accordance with Subsections (3) and (4):
2114	(i) receive a complaint about a non-911 provider;
2115	(ii) determine whether the complaint has merit;
2116	(iii) issue a finding of:
2117	(A) a meritorious complaint; or
2118	(B) a non-meritorious complaint; and
2119	(iv) forward a finding of a meritorious complaint to the governing body of the political
2120	subdivision:
2121	(A) in which the non-911 provider is licensed; or
2122	(B) that provides the non-911 services, if different from Subsection (1)(b)(iv)(A).
2123	(2) (a) A political subdivision that receives a finding of a meritorious complaint from
2124	the department:
2125	(i) shall take corrective action that the political subdivision determines is appropriate;
2126	and
2127	(ii) shall, if the political subdivision determines corrective action will not resolve the
2128	complaint or is not appropriate:
2129	(A) issue a request for proposal for non-911 service in the geographic service area if
2130	the political subdivision will not respond to the request for proposal; or
2131	(B) (I) make a finding that a request for proposal for non-911 services is appropriate
2132	and the political subdivision intends to respond to a request for proposal; and
2133	(II) submit the political subdivision's findings to the department with a request that the
2134	department issue a request for proposal in accordance with Section [26-8a-405.5]
2135	<u>26B-2-359</u> .
2136	(b) (i) If Subsection (2)(a)(ii)(A) applies, the political subdivision shall issue the
2137	request for proposal in accordance with Sections [26-8a-405.1] <u>26B-2-355</u> through
2138	[26-8a-405.3] <u>26B-2-357</u> .
2139	(ii) If Subsection (2)(a)(ii)(B) applies, the department shall issue a request for
2140	proposal for non-911 services in accordance with Section [26-8a-405.5] <u>26B-2-359</u> .
2141	(3) The department shall make a determination under Subsection (1)(b) if:

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(a) the department receives a written complaint from any of the following in the

2143	geographic service area:
2144	(i) a hospital;
2145	(ii) a health care facility;
2146	(iii) a political subdivision; or
2147	(iv) an individual; and
2148	(b) the department determines, in accordance with Subsection (1)(b), that the
2149	complaint has merit.
2150	(4) (a) If the department receives a complaint under Subsection (1)(b), the
2151	department shall request a written response from the non-911 provider concerning the
2152	complaint.
2153	(b) The department shall make a determination under Subsection (1)(b) based on:
2154	(i) the written response from the non-911 provider; and
2155	(ii) other information that the department may have concerning the quality of service
2156	of the non-911 provider.
2157	(c) (i) The department's determination under Subsection (1)(b) is not subject to an
2158	adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.
2159	(ii) The department shall adopt administrative rules in accordance with Title 63G,
2160	Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of Subsection
2161	(1)(b).
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2163	[26-8a-405.5.] <u>26B-4-159.</u> Use of competitive sealed proposals Procedure
2164	Appeal rights.
2165	(1) (a) The department shall issue a request for proposal for non-911 services in a
2166	geographic service area if the department receives a request from a political subdivision
2167	under Subsection [26-8a-405.4] 26B-2-358 (2)(a)(ii)(B) to issue a request for proposal for
2168	non-911 services.
2169	(b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall
2170	be solicited through a request for proposal and the provisions of this section.
2171	(c) (i) Notice of the request for proposals shall be published:
2172	(A) at least once a week for three consecutive weeks in a newspaper of general
2173	circulation published in the county; or
2174	(B) if there is no such newspaper, then notice shall be posted for at least 20 days in

2175 at least five public places in the county; and

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- 2176 (ii) in accordance with Section 45-1-101 for at least 20 days.
- (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing 2177 2178 offerors during the process of negotiations.
 - (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the department shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.
 - (ii) The department shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.
 - (c) Subsequent to the presubmission conference, the department may issue addenda to the request for proposals. An addenda to a request for proposal shall be finalized and posted by the department at least 45 days before the day on which the proposal must be submitted.
 - (d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.
 - (e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.
 - (3) (a) (i) The department may select an applicant approved by the department under Section [26-8a-404] 26B-2-353 to provide non-911 services by contract to the most responsible offeror as defined in Section 63G-6a-103.
 - (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the public, taking into consideration price and the evaluation factors set forth in the request for proposal.
 - (b) The applicants who are approved under Section [26-8a-405] 26B-2-354 and who are selected under this section may be the political subdivision responding to the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.
 - (c) The department may reject all of the competitive proposals.
- 2205 (4) In seeking competitive sealed proposals and awarding contracts under this 2206 section, the department:

2207 (a) shall consider the public convenience and necessity factors listed in Subsections 2208 [26-8a-408] **26B-2-362** (2) through (6); 2209 (b) shall require the applicant responding to the proposal to disclose how the 2210 applicant will meet performance standards in the request for proposal: 2211 (c) may not require or restrict an applicant to a certain method of meeting the 2212 performance standards, including: 2213 (i) requiring ambulance medical personnel to also be a firefighter; or 2214 (ii) mandating that offerors use fire stations or dispatch services of the political 2215 subdivision; 2216 (d) shall require an applicant to submit the proposal: 2217 (i) based on full cost accounting in accordance with generally accepted accounting 2218 principals; and 2219 (ii) if the applicant is a governmental entity, in addition to the requirements of 2220 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards 2221 and in compliance with the State of Utah Legal Compliance Audit Guide; and 2222 (e) shall set forth in the request for proposal: 2223 (i) the method for determining full cost accounting in accordance with generally 2224 accepted accounting principles, and require an applicant to submit the proposal based on 2225 such full cost accounting principles; 2226 (ii) guidelines established to further competition and provider accountability; and 2227 (iii) a list of the factors that will be considered by the department in the award of the 2228 contract, including by percentage, the relative weight of the factors established under this 2229 Subsection (4)(e), which may include: 2230 (A) response times; 2231 (B) staging locations; 2232 (C) experience; 2233 (D) quality of care; and (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i). 2234 2235 (5) A license issued under this section: 2236 (a) is for the exclusive geographic service area approved by the department; 2237 (b) is valid for four years; 2238 (c) is not subject to a request for license from another applicant under the provisions

- of Sections [26-8a-406] 26B-2-360 through [26-8a-409] 26B-2-363 during the four-year 2239 2240 term, unless the applicant's license is revoked under Section [26-8a-504] 26B-2-330; 2241 (d) is subject to supervision by the department under Sections [26-8a-503] 2242 26B-2-329 and [26-8a-504] 26B-2-330; and 2243 (e) except as provided in Subsection (4)(a), is not subject to the provisions of 2244 Sections [26-8a-406] 26B-2-360 through [26-8a-409] 26B-2-363. 2245 2246 [26-8a-406.] 26B-4-160. Ground ambulance and paramedic licenses -- Parties. 2247 (1) When an applicant approved under Section [26-8a-404] 26B-2-353 seeks 2248 licensure under the provisions of Sections [26-8a-406] 26B-2-360 through [26-8a-409] 2249 26B-2-363, the department shall: 2250 (a) issue a notice of agency action to the applicant to commence an informal 2251 administrative proceeding; 2252 (b) provide notice of the application to all interested parties; and 2253 (c) publish notice of the application, at the applicant's expense: 2254 (i) once a week for four consecutive weeks, in a newspaper of general circulation in 2255 the geographic service area that is the subject of the application; and 2256 (ii) in accordance with Section 45-1-101 for four weeks. 2257 (2) An interested party has 30 days to object to an application. 2258 (3) If an interested party objects, the presiding officer shall join the interested party as 2259 an indispensable party to the proceeding. 2260 (4) The department may join the proceeding as a party to represent the public 2261 interest. 2262 (5) Others who may be affected by the grant of a license to the applicant may join the proceeding, if the presiding officer determines that they meet the requirement of legal 2263 2264 standing. 2265 [26-8a-407.] 26B-4-161. Ground ambulance and paramedic licenses --2266 2267 Proceedings.
 - (1) The presiding officer shall:
- 2269 (a) commence an informal adjudicative proceeding within 120 days of receiving a 2270 completed application;

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2271	(b) meet with the applicant and objecting interested parties and provide no less than
2272	120 days for a negotiated resolution, consistent with the criteria in Section [26-8a-408]
2273	<u>26B-2-362</u> ;
2274	(c) set aside a separate time during the proceedings to accept public comment on the
2275	application; and
2276	(d) present a written decision to the executive director if a resolution has been
2277	reached that satisfies the criteria in Section [26-8a-408] <u>26B-2-362</u> .
2278	(2) At any time during an informal adjudicative proceeding under Subsection (1), any
2279	party may request conversion of the informal adjudicative proceeding to a formal adjudicative
2280	proceeding in accordance with Section 63G-4-202.
2281	(3) Upon conversion to a formal adjudicative proceeding, a hearing officer shall be
2282	assigned to the application as provided in Section [26-8a-409] 26B-2-363. The hearing
2283	office shall:
2284	(a) set aside a separate time during the proceedings to accept public comment on the
2285	application;
2286	(b) apply the criteria established in Section [26-8a-408] <u>26B-2-362</u> ; and
2287	(c) present a recommended decision to the executive director in writing.
2288	(4) The executive director may, as set forth in a final written order, accept, modify,
2289	reject, or remand the decision of a presiding or hearing officer after:
2290	(a) reviewing the record;
2291	(b) giving due deference to the officer's decision; and
2292	(c) determining whether the criteria in Section [26-8a-408] <u>26B-2-362</u> have been
2293	satisfied.
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2295	[26-8a-408.] <u>26B-4-162.</u> Criteria for determining public convenience and
2296	necessity.
2297	(1) The criteria for determining public convenience and necessity is set forth in
2298	Subsections (2) through (6).
2299	(2) Access to emergency medical services shall be maintained or improved. The
2300	officer shall consider the impact on existing services, including the impact on response times,

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call volumes, populations and exclusive geographic service areas served, and the ability of

surrounding licensed providers to service their exclusive geographic service areas. The

2303 issuance or amendment of a license may not create an orphaned area. 2304 (3) The quality of service in the area shall be maintained or improved. The officer shall consider the: 2305 2306 (a) staffing and equipment standards of the current licensed provider and the 2307 applicant; (b) training and licensure levels of the current licensed provider's staff and the 2308 2309 applicant's staff; 2310 (c) continuing medical education provided by the current licensed provider and the 2311 applicant; 2312 (d) levels of care as defined by department rule; 2313 (e) plan of medical control; and 2314 (f) the negative or beneficial impact on the regional emergency medical service 2315 system to provide service to the public. 2316 (4) The cost to the public shall be justified. The officer shall consider: 2317 (a) the financial solvency of the applicant; 2318 (b) the applicant's ability to provide services within the rates established under 2319 Section [26-8a-403] 26B-2-352; 2320 (c) the applicant's ability to comply with cost reporting requirements; 2321 (d) the cost efficiency of the applicant; and 2322 (e) the cost effect of the application on the public, interested parties, and the 2323 emergency medical services system. 2324 (5) Local desires concerning cost, quality, and access shall be considered. The 2325 officer shall assess and consider: (a) the existing provider's record of providing services and the applicant's record and 2326 2327 ability to provide similar or improved services; 2328 (b) locally established emergency medical services goals, including those established 2329 in Subsection (7); (c) comment by local governments on the applicant's business and operations plans; 2330 (d) comment by interested parties that are providers on the impact of the application 2331 2332 on the parties' ability to provide emergency medical services;

application on the citizens it represents; and

(e) comment by interested parties that are local governments on the impact of the

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2335	(f) public comment on any aspect of the application or proposed license.
2336	(6) Other related criteria:
2337	(a) the officer considers necessary; or
2338	(b) established by department rule.
2339	(7) Local governments shall establish cost, quality, and access goals for the ground
2340	ambulance and paramedic services that serve their areas.
2341	(8) In a formal adjudicative proceeding, the applicant bears the burden of establishing
2342	that public convenience and necessity require the approval of the application for all or part of
2343	the exclusive geographic service area requested.
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2345	[26-8a-409.] <u>26B-4-163.</u> Ground ambulance and paramedic licenses Hearing
2346	and presiding officers.
2347	(1) The department shall set training standards for hearing officers and presiding
2348	officers.
2349	(2) At a minimum, a presiding officer shall:
2350	(a) be familiar with the theory and application of public convenience and necessity;
2351	and
2352	(b) have a working knowledge of the emergency medical service system in the state.
2353	(3) In addition to the requirements in Subsection (2), a hearing officer shall also be
2354	licensed to practice law in the state.
2355	(4) The department shall provide training for hearing officer and presiding officer
2356	candidates in the theory and application of public convenience and necessity and on the
2357	emergency medical system in the state.
2358	(5) The department shall maintain a roster of no less than five individuals who meet
2359	the minimum qualifications for both presiding and hearing officers and the standards set by
2360	the department.
2361	(6) The parties may mutually select an officer from the roster if the officer is available.
2362	(7) If the parties cannot agree upon an officer under Subsection (4), the department
2363	shall randomly select an officer from the roster or from a smaller group of the roster agreed
2364	upon by the applicant and the objecting interested parties.

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[26-8a-410.] <u>26B-4-164.</u> Local approvals.

- 2367 (1) Licensed ambulance providers and paramedic providers shall meet all local 2368 zoning and business licensing standards generally applicable to businesses operating within 2369 the jurisdiction.
 - (2) Publicly subsidized providers shall demonstrate approval of the taxing authority that will provide the subsidy.
- 2372 (3) A publicly operated service shall demonstrate that the governing body has
 2373 approved the provision of services to the entire exclusive geographic service area that is the
 2374 subject of the license, including those areas that may lie outside the territorial or jurisdictional
 2375 boundaries of the governing body.

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[26-8a-411.] <u>26B-4-165.</u> Limitation on repetitive applications.

- A person who has previously applied for a license under Sections [26-8a-406]

 2379 <u>26B-2-360</u> through [26-8a-409] <u>26B-2-363</u> may not apply for a license for the same service

 that covers any exclusive geographic service area that was the subject of the prior
- 2381 application unless:
- 2382 (1) one year has passed from the date of the issuance of a final decision under 2383 Section [26-8a-407] 26B-2-361; or
- 2384 (2) all interested parties and the department agree that a new application is in the public interest.

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[26-8a-412.] <u>26B-4-166.</u> License for air ambulance providers.

- 2388 (1) An applicant for an air ambulance provider shall apply to the department for a license only by:
- 2390 (a) submitting a complete application;
 - (b) providing information in the format required by the department; and
- (c) paying the required fees.
- 2393 (2) The department may make rules establishing minimum qualifications and requirements for:
- 2395 (a) personnel;
- 2396 (b) capital reserves;
- 2397 (c) equipment;
- 2398 (d) business plan;

2399	(e) operational procedures;
2400	(f) resource hospital and medical direction agreements;
2401	(g) management and control qualifications and requirements; and
2402	(h) other matters that may be relevant to an applicant's ability to provide air
2403	ambulance services.
2404	(3) Upon receiving a completed application and the required fees, the department
2405	shall review the application and determine whether the application meets the minimum
2406	requirements for licensure.
2407	(4) The department may deny an application for an air ambulance if:
2408	(a) the department finds that the application contains any materially false or
2409	misleading information or is incomplete;
2410	(b) the application demonstrates that the applicant fails to meet the minimum
2411	requirements for licensure; or
2412	(c) the department finds after inspection that the applicant does not meet the
2413	minimum requirements for licensure.
2414	(5) If the department denies an application under this section, it shall notify the
2415	applicant in writing setting forth the grounds for the denial.
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2417	[26-8a-413.] <u>26B-4-167.</u> License renewals.
2418	(1) A licensed provider desiring to renew its license shall meet the renewal
2419	requirements established by department rule.
2420	(2) The department shall issue a renewal license for a ground ambulance provider or
2421	a paramedic provider upon the licensee's application for a renewal and without a public
2422	hearing if:
2423	(a) the applicant was licensed under the provisions of Sections [26-8a-406]
2424	26B-2-360 through [26-8a-409] <u>26B-2-363</u> ; and
2425	(b) there has been:
2426	(i) no change in controlling interest in the ownership of the licensee as defined in
2427	Section [26-8a-415] <u>26B-2-369</u> ;
2428	(ii) no serious, substantiated public complaints filed with the department against the
2429	licensee during the term of the previous license;

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(iii) no material or substantial change in the basis upon which the license was

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- 2432 (iv) no reasoned objection from the committee or the department; and
- 2433 (v) no change to the license type.
- 2434 (3) (a) (i) The provisions of this Subsection (3) apply to a provider licensed under the provisions of Sections [26-8a-405.1] 26B-2-355 and [26-8a-405.2] 26B-2-356.
 - (ii) A provider may renew its license if the provisions of Subsections (1) and (2) and this Subsection (3) are met.
 - (b) (i) The department shall issue a renewal license to a provider upon the provider's application for renewal for one additional four-year term if the political subdivision certifies to the department that the provider has met all of the specifications of the original bid.
 - (ii) If the political subdivision does not certify to the department that the provider has met all of the specifications of the original bid, the department may not issue a renewal license and the political subdivision shall enter into a public bid process under Sections [26-8a-405.1] 26B-2-355 and [26-8a-405.2] 26B-2-356.
 - (c) (i) The department shall issue an additional renewal license to a provider who has already been issued a one-time renewal license under the provisions of Subsection (3)(b)(i) if the department and the political subdivision do not receive, prior to the expiration of the provider's license, written notice from an approved applicant informing the political subdivision of the approved applicant's desire to submit a bid for ambulance or paramedic service.
 - (ii) If the department and the political subdivision receive the notice in accordance with Subsection (3)(c)(i), the department may not issue a renewal license and the political subdivision shall enter into a public bid process under Sections [26-8a-405.1] 26B-2-355 and [26-8a-405.2] 26B-2-356.
 - (4) The department shall issue a renewal license for an air ambulance provider upon the licensee's application for renewal and completion of the renewal requirements established by department rule.

[26-8a-414.] <u>26B-4-168.</u> Annexations.

- (1) A municipality shall comply with the provisions of this section if the municipality is licensed under this [chapter] part and desires to provide service to an area that is:
 - (a) included in a petition for annexation under Title 10, Chapter 2, Part 4, Annexation;

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- (b) currently serviced by another provider licensed under this [chapter] part.
- 2465 (2) (a) (i) At least 45 days prior to approving a petition for annexation, the municipality 2466 shall certify to the department that by the time of the approval of the annexation the 2467 municipality can meet or exceed the current level of service provided by the existing licensee 2468 for the annexed area by meeting the requirements of Subsections (2)(b)(ii)(A) through (D); 2469 and
 - (ii) no later than three business days after the municipality files a petition for annexation in accordance with Section 10-2-403, provide written notice of the petition for annexation to:
 - (A) the existing licensee providing service to the area included in the petition of annexation; and
 - (B) the department.
 - (b) (i) After receiving a certification under Subsection (2)(a), but prior to the municipality approving a petition for annexation, the department may audit the municipality only to verify the requirements of Subsections (2)(b)(ii)(A) through (D).
 - (ii) If the department elects to conduct an audit, the department shall make a finding that the municipality can meet or exceed the current level of service provided by the existing licensee for the annexed area if the department finds that the municipality has or will have by the time of the approval of the annexation:
 - (A) adequate trained personnel to deliver basic and advanced life support services;
 - (B) adequate apparatus and equipment to deliver emergency medical services;
 - (C) adequate funding for personnel and equipment; and
 - (D) appropriate medical controls, such as a medical director and base hospital.
 - (iii) The department shall submit the results of the audit in writing to the municipal legislative body.
 - (3) (a) If the department audit finds that the municipality meets the requirements of Subsection (2)(b)(ii), the department shall issue an amended license to the municipality and all other affected licensees to reflect the municipality's new boundaries after the department receives notice of the approval of the petition for annexation from the municipality in accordance with Section 10-2-425.
 - (b) (i) Notwithstanding the provisions of Subsection 63G-4-102(2)(k), if the

- department audit finds that the municipality fails to meet the requirements of Subsection 2495 2496 (2)(b)(ii), the municipality may request an adjudicative proceeding under the provisions of Title 63G, Chapter 4, Administrative Procedures Act. The municipality may approve the 2497 2498 petition for annexation while an adjudicative proceeding requested under this Subsection 2499 (3)(b)(i) is pending.
- 2500 (ii) The department shall conduct an adjudicative proceeding when requested under 2501 Subsection (3)(b)(i).
 - (iii) Notwithstanding the provisions of Sections [26-8a-404] 26B-2-353 through [26-8a-409] 26B-2-363, in any adjudicative proceeding held under the provisions of Subsection (3)(b)(i), the department bears the burden of establishing that the municipality cannot, by the time of the approval of the annexation, meet the requirements of Subsection (2)(b)(ii).
 - (c) If, at the time of the approval of the annexation, an adjudicative proceeding is pending under the provisions of Subsection (3)(b)(i), the department shall issue amended licenses if the municipality prevails in the adjudicative proceeding.

[26-8a-415.] **26B-4-169**. Changes in ownership.

- (1) A licensed provider whose ownership or controlling ownership interest has changed shall submit information to the department, as required by department rule:
- (a) to establish whether the new owner or new controlling party meets minimum requirements for licensure; and
- (b) except as provided in Subsection (2), to commence an administrative proceeding to determine whether the new owner meets the requirement of public convenience and necessity under Section [26-8a-408] 26B-2-362.
 - (2) An administrative proceeding is not required under Subsection (1)(b) if:
- (a) the change in ownership interest is among existing owners of a closely held corporation and the change does not result in a change in the management of the licensee or in the name of the licensee;
- (b) the change in ownership in a closely held corporation results in the introduction of new owners, provided that:
- 2525 (i) the new owners are limited to individuals who would be entitled to the equity in the closely held corporation by the laws of intestate succession had the transferor died intestate 2526

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- (ii) the majority owners on January 1, 1999, have been disclosed to the department 2528 by October 1, 1999, and the majority owners on January 1, 1999, retain a majority interest in 2529 2530 the closely held corporation; and
 - (iii) the name of the licensed provider remains the same;
 - (c) the change in ownership is the result of one or more owners transferring their interests to a trust, limited liability company, partnership, or closely held corporation so long as the transferors retain control over the receiving entity:
 - (d) the change in ownership is the result of a distribution of an estate or a trust upon the death of the testator or the trustor and the recipients are limited to individuals who would be entitled to the interest by the laws of intestate succession had the transferor died intestate at the time of the transfer: or
 - (e) other similar changes that the department establishes, by rule, as having no significant impact on the cost, quality, or access to emergency medical services.

[26-8a-416.] 26B-4-170. Overlapping licenses.

- (1) As used in this section:
- (a) "Overlap" means two ground ambulance interfacility transport providers that are licensed at the same level of service in all or part of a single geographic service area.
- (b) "Overlay" means two ground ambulance interfacility transport providers that are licensed at a different level of service in all or part of a single geographic service area.
- (2) Notwithstanding the exclusive geographic service requirement of Section [26-8a-402] 26B-2-351, the department shall recognize overlap and overlay ground ambulance interfacility transport licenses that existed on or before May 4, 2022.
- (3) The department may, without an adjudicative proceeding but with at least 30 days notice to providers in the same geographic service area, amend an existing overlay ground ambulance interfacility transport license solely to convert an overlay into an overlap if the existing ground ambulance interfacility transport licensed provider meets the requirements described in Subsection [26-8a-404] 26B-2-353 (4).
 - (4) An amendment of a license under this section may not alter:
- 2557 (a) other terms of the original license, including the applicable geographic service 2558 area; or

- (b) the license of other providers that provide interfacility transport services in the 2559 2560 geographic service area. 2561 (5) Notwithstanding Subsection (2), any license for an overlap area terminates upon: 2562 (a) relinquishment by the provider; or 2563 (b) revocation by the department. 2564 Part 2. Cannabinoid Research and Medical Cannabis. 2565 2566 [26-61a-102.] 26B-4-201. Definitions. 2567 2568 As used in this [chapter] part: (1) "Active tetrahydrocannabinol" means THC, any THC analog, and 2569 tetrahydrocannabinolic acid. 2570 (2) "Cannabis Research Review Board" means the Cannabis Research Review 2571 2572 Board created in Section 26-61-201. 2573 (3) "Cannabis" means marijuana. (4) "Cannabis cultivation facility" means the same as that term is defined in Section 2574 4-41a-102. 2575 2576 (5) "Cannabis processing facility" means the same as that term is defined in Section 2577 4-41a-102. 2578 (6) "Cannabis product" means a product that: 2579 (a) is intended for human use; and 2580 (b) contains cannabis or any tetrahydrocannabinol or THC analog in a total 2581 concentration of 0.3% or greater on a dry weight basis. (7) "Cannabis production establishment" means the same as that term is defined in 2582 2583 Section 4-41a-102. 2584 (8) "Cannabis production establishment agent" means the same as that term is 2585 defined in Section 4-41a-102. 2586 (9) "Cannabis production establishment agent registration card" means the same as
- 2587 that term is defined in Section 4-41a-102.
- 2588 (10) "Community location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.
 - (11) "Conditional medical cannabis card" means an electronic medical cannabis card

- 2591 that the department issues in accordance with Subsection 26-61a-201(1)(b) to allow an 2592 applicant for a medical cannabis card to access medical cannabis during the department's review of the application. 2593
- 2594 (12) "Controlled substance database" means the controlled substance database 2595 created in Section 58-37f-201.
 - (13) "Department" means the Department of Health.
- (14) "Designated caregiver" means: 2597
- (a) an individual: 2598

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- 2599 (i) whom an individual with a medical cannabis patient card or a medical cannabis 2600 guardian card designates as the patient's caregiver; and
 - (ii) who registers with the department under Section 26-61a-202; or
- 2602 (b) (i) a facility that an individual designates as a designated caregiver in accordance 2603 with Subsection 26-61a-202(1)(b); or
 - (ii) an assigned employee of the facility described in Subsection 26-61a-202(1)(b)(ii).
 - (15) "Directions of use" means recommended routes of administration for a medical cannabis treatment and suggested usage guidelines.
- 2607 (16) "Dosing guidelines" means a quantity range and frequency of administration for a 2608 recommended treatment of medical cannabis.
 - (17) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
 - (18) "Home delivery medical cannabis pharmacy" means a medical cannabis pharmacy that the department authorizes, as part of the pharmacy's license, to deliver medical cannabis shipments to a medical cannabis cardholder's home address to fulfill electronic orders that the state central patient portal facilitates.
 - (19) "Inventory control system" means the system described in Section 4-41a-103.
 - (20) "Legal dosage limit" means an amount that:
 - (a) is sufficient to provide 30 days of treatment based on the dosing guidelines that the relevant recommending medical provider or the state central patient portal or pharmacy medical provider, in accordance with Subsection 26-61a-502(4) or (5), recommends; and
 - (b) may not exceed:
 - (i) for unprocessed cannabis in a medicinal dosage form, 113 grams by weight; and
 - (ii) for a cannabis product in a medicinal dosage form, a quantity that contains, in

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2623	total, greater than 20 grams of active tetrahydrocannabinol.
2624	(21) "Legal use termination date" means a date on the label of a container of
2625	unprocessed cannabis flower:
2626	(a) that is 60 days after the date of purchase of the cannabis; and
2627	(b) after which, the cannabis is no longer in a medicinal dosage form outside of the
2628	primary residence of the relevant medical cannabis patient cardholder.
2629	(22) "Limited medical provider" means an individual who:
2630	(a) meets the recommending qualifications; and
2631	(b) has no more than 15 patients with a valid medical cannabis patient card or
2632	provisional patient card as a result of the individual's recommendation, in accordance with
2633	Subsection 26-61a-106(1)(b).
2634	(23) "Marijuana" means the same as that term is defined in Section 58-37-2.
2635	(24) "Medical cannabis" means cannabis in a medicinal dosage form or a cannabis
2636	product in a medicinal dosage form.
2637	(25) "Medical cannabis card" means a medical cannabis patient card, a medical
2638	cannabis guardian card, a medical cannabis caregiver card, or a conditional medical
2639	cannabis card.
2640	(26) "Medical cannabis cardholder" means:
2641	(a) a holder of a medical cannabis card; or
2642	(b) a facility or assigned employee, described in Subsection(14)(b), only:
2643	(i) within the scope of the facility's or assigned employee's performance of the role of
2644	a medical cannabis patient cardholder's caregiver designation under Subsection
2645	26-61a-202(1)(b); and
2646	(ii) while in possession of documentation that establishes:
2647	(A) a caregiver designation described in Subsection 26-61a-202(1)(b);
2648	(B) the identity of the individual presenting the documentation; and
2649	(C) the relation of the individual presenting the documentation to the caregiver
2650	designation.
2651	(27) "Medical cannabis caregiver card" means an electronic document that a
2652	cardholder may print or store on an electronic device or a physical card or document that:

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cardholder or a medical cannabis guardian cardholder designates as a designated caregiver;

(a) the department issues to an individual whom a medical cannabis patient

2655	and
2656	(b) is connected to the electronic verification system.
2657	(28) "Medical cannabis courier" means a courier that:
2658	(a) the department licenses in accordance with Section 26-61a-604; and
2659	(b) contracts with a home delivery medical cannabis pharmacy to deliver medical
2660	cannabis shipments to fulfill electronic orders that the state central patient portal facilitates.
2661	(29) "Medical cannabis courier agent" means an individual who:
2662	(a) is an employee of a medical cannabis courier; and
2663	(b) who holds a valid medical cannabis courier agent registration card.
2664	(30) (a) "Medical cannabis device" means a device that an individual uses to ingest or
2665	inhale cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage
2666	form.
2667	(b) "Medical cannabis device" does not include a device that:
2668	(i) facilitates cannabis combustion; or
2669	(ii) an individual uses to ingest substances other than cannabis.
2670	(31) "Medical cannabis guardian card" means an electronic document that a
2671	cardholder may print or store on an electronic device or a physical card or document that:
2672	(a) the department issues to the parent or legal guardian of a minor with a qualifying
2673	condition; and
2674	(b) is connected to the electronic verification system.
2675	(32) "Medical cannabis patient card" means an electronic document that a cardholder
2676	may print or store on an electronic device or a physical card or document that:
2677	(a) the department issues to an individual with a qualifying condition; and
2678	(b) is connected to the electronic verification system.
2679	(33) "Medical cannabis pharmacy" means a person that:
2680	(a) (i) acquires or intends to acquire medical cannabis or a cannabis product in a
2681	medicinal dosage form from a cannabis processing facility or another medical cannabis
2682	pharmacy or a medical cannabis device; or
2683	(ii) possesses medical cannabis or a medical cannabis device; and
2684	(b) sells or intends to sell medical cannabis or a medical cannabis device to a medica
2685	cannabis cardholder.
2686	(34) "Medical cannabis pharmacy agent" means an individual who:

- (a) is an employee of a medical cannabis pharmacy; and 2687 (b) who holds a valid medical cannabis pharmacy agent registration card. 2688 (35) "Medical cannabis pharmacy agent registration card" means a registration card 2689 2690 issued by the department that authorizes an individual to act as a medical cannabis 2691 pharmacy agent. (36) "Medical cannabis shipment" means a shipment of medical cannabis or a 2692 medical cannabis product that a home delivery medical cannabis pharmacy or a medical 2693 2694 cannabis courier delivers to a medical cannabis cardholder's home address to fulfill an 2695 electronic medical cannabis order that the state central patient portal facilitates. 2696 (37) "Medical cannabis treatment" means cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device. 2697 2698 (38) (a) "Medicinal dosage form" means: (i) for processed medical cannabis or a medical cannabis product, the following with a 2699 2700 specific and consistent cannabinoid content: 2701 (A) a tablet; 2702 (B) a capsule: 2703 (C) a concentrated liquid or viscous oil; 2704 (D) a liquid suspension that, after December 1, 2022, does not exceed 30 ml: 2705 (E) a topical preparation: 2706 (F) a transdermal preparation; 2707 (G) a sublingual preparation; 2708 (H) a gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or 2709 rectangular cuboid shape; 2710 (I) a resin or wax; or 2711 (J) an aerosol; or 2712 (ii) for unprocessed cannabis flower, a container described in Section 4-41a-602 that: 2713 (A) contains cannabis flowers in a quantity that varies by no more than 10% from the
- 2715 (B) at any time the medical cannabis cardholder transports or possesses the 2716 container in public, is contained within an opaque bag or box that the medical cannabis 2717 pharmacy provides; and
 - (C) is labeled with the container's content and weight, the date of purchase, the legal

stated weight at the time of packaging;

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- use termination date, and after December 31, 2020, a barcode that provides information 2719 2720 connected to an inventory control system; and 2721 (iii) a form measured in grams, milligrams, or milliliters. 2722 (b) "Medicinal dosage form" includes a portion of unprocessed cannabis flower that: 2723 (i) the medical cannabis cardholder has recently removed from the container 2724 described in Subsection (38)(a)(ii) for use; and 2725 (ii) does not exceed the quantity described in Subsection (38)(a)(ii). 2726 (c) "Medicinal dosage form" does not include: 2727 (i) any unprocessed cannabis flower outside of the container described in Subsection 2728 (38)(a)(ii), except as provided in Subsection (38)(b); 2729 (ii) any unprocessed cannabis flower in a container described in Subsection (38)(a)(ii) 2730 after the legal use termination date; 2731 (iii) a process of vaporizing and inhaling concentrated cannabis by placing the 2732 cannabis on a nail or other metal object that is heated by a flame, including a blowtorch; or 2733 (iv) a liquid suspension that is branded as a beverage. 2734 (39) "Nonresident patient" means an individual who: 2735 (a) is not a resident of Utah or has been a resident of Utah for less than 45 days; 2736 (b) has a currently valid medical cannabis card or the equivalent of a medical 2737 cannabis card under the laws of another state, district, territory, commonwealth, or insular 2738 possession of the United States; and 2739 (c) has been diagnosed with a qualifying condition as described in Section 2740 26-61a-104. 2741 (40) "Payment provider" means an entity that contracts with a cannabis production establishment or medical cannabis pharmacy to facilitate transfers of funds between the 2742 2743 establishment or pharmacy and other businesses or individuals. 2744 (41) "Pharmacy medical provider" means the medical provider required to be on site 2745 at a medical cannabis pharmacy under Section 26-61a-403. (42) "Provisional patient card" means a card that: 2746 2747
 - (a) the department issues to a minor with a qualifying condition for whom:
- 2748 (i) a recommending medical provider has recommended a medical cannabis 2749 treatment; and
- 2750 (ii) the department issues a medical cannabis quardian card to the minor's parent or

legal guardian; and 2751 2752 (b) is connected to the electronic verification system. (43) "Qualified medical provider" means an individual: 2753 2754 (a) who meets the recommending qualifications; and 2755 (b) whom the department registers to recommend treatment with cannabis in a 2756 medicinal dosage form under Section 26-61a-106. (44) "Qualified Patient Enterprise Fund" means the enterprise fund created in Section 2757 26-61a-109. 2758 2759 (45) "Qualifying condition" means a condition described in Section 26-61a-104. 2760 (46) "Recommend" or "recommendation" means, for a recommending medical provider, the act of suggesting the use of medical cannabis treatment, which: 2761 2762 (a) certifies the patient's eligibility for a medical cannabis card; and (b) may include, at the recommending medical provider's discretion, directions of use, 2763 2764 with or without dosing guidelines. (47) "Recommending medical provider" means a qualified medical provider or a 2765 2766 limited medical provider. 2767 (48) "Recommending qualifications" means that an individual: 2768 (a) (i) has the authority to write a prescription; 2769 (ii) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah 2770 Controlled Substances Act; and 2771 (iii) possesses the authority, in accordance with the individual's scope of practice, to 2772 prescribe a Schedule II controlled substance; and 2773 (b) is licensed as: (i) a podiatrist under Title 58, Chapter 5a, Podiatric Physician Licensing Act: 2774 2775 (ii) an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice 2776 Act; 2777 (iii) a physician under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or 2778 2779 (iv) a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act. (49) "State central patient portal" means the website the department creates, in 2780

accordance with Section 26-61a-601, to facilitate patient safety, education, and an electronic

medical cannabis order.

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WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING DRAFT I OR DISCUSSION I URPOSES ONLY
2783	(50) "State central patient portal medical provider" means a physician or pharmacist
2784	that the department employs in relation to the state central patient portal to consult with
2785	medical cannabis cardholders in accordance with Section 26-61a-602.
2786	(51) "State electronic verification system" means the system described in Section
2787	26-61a-103.
2788	(52) "Tetrahydrocannabinol" or "THC" means a substance derived from cannabis or a
2789	synthetic equivalent as described in Subsection 58-37-4(2)(a)(iii)(AA).
2790	(53) "THC analog" means the same as that term is defined in Section 4-41-102.
2791	(54) "Valid form of photo identification" means any of the following forms of
2792	identification that is either current or has expired within the previous six months:
2793	(a) a valid state-issued driver license or identification card;
2794	(b) a valid United States federal-issued photo identification, including:
2795	(i) a United States passport;
2796	(ii) a United States passport card;
2797	(iii) a United States military identification card; or
2798	(iv) a permanent resident card or alien registration receipt card; or
2799	(c) a passport that another country issued.
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2801	[26-61a-103.] <u>26B-4-202.</u> Electronic verification system.
2802	(1) The Department of Agriculture and Food, the department, the Department of
2803	Public Safety, and the Division of Technology Services shall:
2804	(a) enter into a memorandum of understanding in order to determine the function and
2805	operation of the state electronic verification system in accordance with Subsection (2);
2806	(b) coordinate with the Division of Purchasing, under Title 63G, Chapter 6a, Utah
2807	Procurement Code, to develop a request for proposals for a third-party provider to develop
2808	and maintain the state electronic verification system in coordination with the Division of
2809	Technology Services; and
2810	(c) select a third-party provider who:
2811	(i) meets the requirements contained in the request for proposals issued under
2812	Subsection (1)(b); and
2813	(ii) may not have any commercial or ownership interest in a cannabis production

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establishment or a medical cannabis pharmacy.

2815	(2) The Department of Agriculture and Food, the department, the Department of
2816	Public Safety, and the Division of Technology Services shall ensure that, on or before March
2817	1, 2020, the state electronic verification system described in Subsection (1):

- (a) allows an individual to apply for a medical cannabis patient card or, if applicable, a medical cannabis guardian card, provided that the card may not become active until:
- (i) the relevant qualified medical provider completes the associated medical cannabis recommendation; or
- (ii) for a medical cannabis card related to a limited medical provider's recommendation, the medical cannabis pharmacy completes the recording described in Subsection (2)(d);
- (b) allows an individual to apply to renew a medical cannabis patient card or a medical cannabis quardian card in accordance with Section 26-61a-201;
- (c) allows a qualified medical provider, or an employee described in Subsection (3) acting on behalf of the qualified medical provider, to:
 - (i) access dispensing and card status information regarding a patient:
 - (A) with whom the qualified medical provider has a provider-patient relationship; and
- (B) for whom the qualified medical provider has recommended or is considering recommending a medical cannabis card;
- (ii) electronically recommend, after an initial face-to-face visit with a patient described in Subsection 26-61a-201(4)(a)(iii), treatment with cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form and optionally recommend dosing guidelines; and
- (iii) electronically renew a recommendation to a medical cannabis patient cardholder or medical cannabis guardian cardholder:
- (A) using telehealth services, for the qualified medical provider who originally recommended a medical cannabis treatment during a face-to-face visit with the patient; or
- (B) during a face-to-face visit with the patient, for a qualified medical provider who did not originally recommend the medical cannabis treatment during a face-to-face visit.
- (d) beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of facility medical cannabis pharmacy recording, allows a medical cannabis pharmacy medical provider or medical cannabis pharmacy agent, in accordance with Subsection 26-61a-501(10)(a), to:

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2847	(i) access the electronic verification system to review the history within the system of
2848	a patient with whom the provider or agent is interacting, limited to read-only access for
2849	medical cannabis pharmacy agents unless the medical cannabis pharmacy's pharmacist in
2850	charge authorizes add and edit access;

- (ii) record a patient's recommendation from a limited medical provider, including any directions of use, dosing guidelines, or caregiver indications from the limited medical provider; and
- (iii) record a limited medical provider's renewal of the provider's previous recommendation;
 - (e) connects with:

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- (i) an inventory control system that a medical cannabis pharmacy uses to track in real time and archive purchases of any cannabis in a medicinal dosage form, cannabis product in a medicinal dosage form, or a medical cannabis device, including:
 - (A) the time and date of each purchase;
- (B) the quantity and type of cannabis, cannabis product, or medical cannabis device purchased;
- (C) any cannabis production establishment, any medical cannabis pharmacy, or any medical cannabis courier associated with the cannabis, cannabis product, or medical cannabis device; and
- (D) the personally identifiable information of the medical cannabis cardholder who made the purchase; and
- (ii) any commercially available inventory control system that a cannabis production establishment utilizes in accordance with Section 4-41a-103 to use data that the Department of Agriculture and Food requires by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, from the inventory tracking system that a licensee uses to track and confirm compliance;
 - (f) provides access to:
- 2874 (i) the department to the extent necessary to carry out the department's functions and responsibilities under this [chapter] part;
- 2876 (ii) the Department of Agriculture and Food to the extent necessary to carry out the 2877 functions and responsibilities of the Department of Agriculture and Food under Title 4, 2878 Chapter 41a, Cannabis Production Establishments; and

- (iii) the Division of Professional Licensing to the extent necessary to carry out the 2879 2880 functions and responsibilities related to the participation of the following in the 2881 recommendation and dispensing of medical cannabis:
 - (A) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act:
 - (B) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- (C) an advanced practice registered nurse licensed under Title 58, Chapter 31b, 2884 2885 Nurse Practice Act:
- 2886 (D) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or 2887 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
- 2888 (E) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act: 2889
 - (g) provides access to and interaction with the state central patient portal;
- (h) communicates dispensing information from a record that a medical cannabis pharmacy submits to the state electronic verification system under Subsection 2892 2893 26-61a-502(6)(a)(ii) to the controlled substance database;
 - (i) provides access to state or local law enforcement:
- 2895 (i) during a law enforcement encounter, without a warrant, using the individual's driver 2896 license or state ID, only for the purpose of determining if the individual subject to the law 2897 enforcement encounter has a valid medical cannabis card; or
 - (ii) after obtaining a warrant; and

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- (i) creates a record each time a person accesses the system that identifies the person who accesses the system and the individual whose records the person accesses.
- (3) (a) Beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of allowing employee access under this Subsection (3), an employee of a qualified medical provider may access the electronic verification system for a purpose described in Subsection (2)(c) on behalf of the qualified medical provider if:
- (i) the qualified medical provider has designated the employee as an individual authorized to access the electronic verification system on behalf of the qualified medical provider;
- (ii) the qualified medical provider provides written notice to the department of the 2909 2910 employee's identity and the designation described in Subsection (3)(a)(i); and

2911 (iii) the department grants to the employee access to the electronic verification 2912 system. 2913 (b) An employee of a business that employs a qualified medical provider may access 2914 the electronic verification system for a purpose described in Subsection (2)(c) on behalf of 2915 the qualified medical provider if: 2916 (i) the qualified medical provider has designated the employee as an individual 2917 authorized to access the electronic verification system on behalf of the qualified medical 2918 provider: 2919 (ii) the qualified medical provider and the employing business jointly provide written 2920 notice to the department of the employee's identity and the designation described in 2921 Subsection (3)(b)(i); and 2922 (iii) the department grants to the employee access to the electronic verification 2923 system. 2924 (4) (a) As used in this Subsection (4), "prescribing provider" means: 2925 (i) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act; 2926 (ii) an advanced practice registered nurse licensed under Title 58, Chapter 31b, 2927 Nurse Practice Act; 2928 (iii) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or 2929 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or 2930 (iv) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician 2931 Assistant Act. 2932 (b) Beginning on the earlier of September 1, 2021, or the date on which the electronic 2933 verification system is functionally capable of allowing provider access under this Subsection 2934 (4), a prescribing provider may access information in the electronic verification system 2935 regarding a patient the prescribing provider treats. 2936 (5) The department may release limited data that the system collects for the purpose 2937 of: (a) conducting medical and other department approved research; 2938 2939 (b) providing the report required by Section 26-61a-703; and 2940 (c) other official department purposes. 2941 (6) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, to establish:

- 2943 (a) the limitations on access to the data in the state electronic verification system as 2944 described in this section; and
 - (b) standards and procedures to ensure accurate identification of an individual requesting information or receiving information in this section.
 - (7) (a) Any person who knowingly and intentionally releases any information in the state electronic verification system in violation of this section is guilty of a third degree felony.
 - (b) Any person who negligently or recklessly releases any information in the state electronic verification system in violation of this section is guilty of a class C misdemeanor.
 - (8) (a) Any person who obtains or attempts to obtain information from the state electronic verification system by misrepresentation or fraud is guilty of a third degree felony.
 - (b) Any person who obtains or attempts to obtain information from the state electronic verification system for a purpose other than a purpose this [chapter] part authorizes is guilty of a third degree felony.
 - (9) (a) Except as provided in Subsection (9)(e), a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person information obtained from the state electronic verification system for any purpose other than a purpose specified in this section.
 - (b) Each separate violation of this Subsection (9) is:
 - (i) a third degree felony; and
 - (ii) subject to a civil penalty not to exceed \$5,000.
 - (c) The department shall determine a civil violation of this Subsection (9) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (d) Civil penalties assessed under this Subsection (9) shall be deposited into the General Fund.
 - (e) This Subsection (9) does not prohibit a person who obtains information from the state electronic verification system under Subsection (2)(a), (c), or (f) from:
 - (i) including the information in the person's medical chart or file for access by a person authorized to review the medical chart or file;
 - (ii) providing the information to a person in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996; or
 - (iii) discussing or sharing that information about the patient with the patient.

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2975	[26-61a-104.] <u>26B-4-203.</u> Qualifying condition.
2976	(1) By designating a particular condition under Subsection (2) for which the use of
2977	medical cannabis to treat symptoms is decriminalized, the Legislature does not conclusively
2978	state that:
2979	(a) current scientific evidence clearly supports the efficacy of a medical cannabis
2980	treatment for the condition; or
2981	(b) a medical cannabis treatment will treat, cure, or positively affect the condition.
2982	(2) For the purposes of this [chapter] part, each of the following conditions is a
2983	qualifying condition:
2984	(a) HIV or acquired immune deficiency syndrome;
2985	(b) Alzheimer's disease;
2986	(c) amyotrophic lateral sclerosis;
2987	(d) cancer;
2988	(e) cachexia;
2989	(f) persistent nausea that is not significantly responsive to traditional treatment,
2990	except for nausea related to:
2991	(i) pregnancy;
2992	(ii) cannabis-induced cyclical vomiting syndrome; or
2993	(iii) cannabinoid hyperemesis syndrome;
2994	(g) Crohn's disease or ulcerative colitis;
2995	(h) epilepsy or debilitating seizures;
2996	(i) multiple sclerosis or persistent and debilitating muscle spasms;
2997	(j) post-traumatic stress disorder that is being treated and monitored by a licensed
2998	mental health therapist, as that term is defined in Section 58-60-102, and that:
2999	(i) has been diagnosed by a healthcare provider or mental health provider employed
3000	or contracted by the United States Veterans Administration, evidenced by copies of medical
3001	records from the United States Veterans Administration that are included as part of the
3002	qualified medical provider's pre-treatment assessment and medical record documentation; or
3003	(ii) has been diagnosed or confirmed, through face-to-face or telehealth evaluation of
3004	the patient, by a provider who is:
3005	(A) a licensed board-eligible or board-certified psychiatrist;

(B) a licensed psychologist with a master's-level degree;

3007	(C) a licensed clinical social worker with a master's-level degree; or
3008	(D) a licensed advanced practice registered nurse who is qualified to practice within
3009	the psychiatric mental health nursing specialty and who has completed the clinical practice
3010	requirements in psychiatric mental health nursing, including in psychotherapy, in accordance
3011	with Subsection 58-31b-302(5)(g);
3012	(k) autism;
3013	(I) a terminal illness when the patient's remaining life expectancy is less than six
3014	months;
3015	(m) a condition resulting in the individual receiving hospice care;
3016	(n) a rare condition or disease that:
3017	(i) affects less than 200,000 individuals in the United States, as defined in Section
3018	526 of the Federal Food, Drug, and Cosmetic Act; and
3019	(ii) is not adequately managed despite treatment attempts using:
3020	(A) conventional medications other than opioids or opiates; or
3021	(B) physical interventions;
3022	(o) pain lasting longer than two weeks that is not adequately managed, in the
3023	qualified medical provider's opinion, despite treatment attempts using:
3024	(i) conventional medications other than opioids or opiates; or
3025	(ii) physical interventions;
3026	(p) pain that is expected to last for two weeks or longer for an acute condition,
3027	including a surgical procedure, for which a medical professional may generally prescribe
3028	opioids for a limited duration, subject to Subsection 26-61a-201(5)(c); and
3029	(q) a condition that the Compassionate Use Board approves under Section
3030	26-61a-105, on an individual, case-by-case basis.
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3032	[26-61a-106.] <u>26B-4-204.</u> Qualified medical provider registration Continuing
3033	education Treatment recommendation Limited medical provider.
3034	(1) (a) (i) Except as provided in Subsection (1)(b), an individual may not recommend a
3035	medical cannabis treatment unless the department registers the individual as a qualified
3036	medical provider in accordance with this section.
3037	(ii) Notwithstanding Subsection (1)(a)(i), a qualified medical provider who is podiatrist

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licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act, may not recommend

3039 a medical cannabis treatment except within the course and scope of a practice of podiatry, 3040 as that term is defined in Section 58-5a-102.

- (b) Beginning on the earlier of September 1, 2021, or the date on which the department gives notice that the electronic verification system is functionally capable as described in Subsection 26-61a-103(2)(d), an individual who meets the recommending qualifications may recommend a medical cannabis treatment as a limited medical provider without registering under Subsection (1)(a) if:
- (i) the individual recommends the use of medical cannabis to the patient through an order described in Subsection (1)(c) after:
- (A) a face-to-face visit for an initial recommendation or the renewal of a recommendation for a patient for whom the limited medical provider did not make the patient's original recommendation; or
- (B) a visit using telehealth services for a renewal of a recommendation for a patient for whom the limited medical provider made the patient's original recommendation; and
- (ii) the individual's recommendation or renewal would not cause the total number of the individual's patients who have a valid medical cannabis patient card or provisional patient card resulting from the individual's recommendation to exceed 15.
- (c) The individual described in Subsection (1)(b) shall communicate the individual's recommendation through an order for the medical cannabis pharmacy to record the individual's recommendation or renewal in the state electronic verification system under the individual's recommendation that:
- (i) (A) that the individual or the individual's employee sends electronically to a medical cannabis pharmacy; or
- (B) that the individual gives to the patient in writing for the patient to deliver to a medical cannabis pharmacy; and
 - (ii) may include:

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- (A) directions of use or dosing guidelines; and
- (B) an indication of a need for a caregiver in accordance with Subsection 3066 3067 26-61a-201(3)(c).
 - (d) If the limited medical provider gives the patient a written recommendation to deliver to a medical cannabis pharmacy under Subsection (1)(c)(i)(B), the limited medical provider shall ensure that the document includes all of the information that is included on a

	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
3071	prescription the provider would issue for a controlled substance, including:
3072	(i) the date of issuance;
3073	(ii) the provider's name, address and contact information, controlled substance
3074	license information, and signature; and
3075	(iii) the patient's name, address and contact information, age, and diagnosed
3076	qualifying condition.
3077	(e) In considering making a recommendation as a limited medical provider, an
3078	individual may consult information that the department makes available on the department's
3079	website for recommending providers.
3080	(2) (a) The department shall, within 15 days after the day on which the department
3081	receives an application from an individual, register and issue a qualified medical provider
3082	registration card to the individual if the individual:
3083	(i) provides to the department the individual's name and address;
3084	(ii) provides to the department a report detailing the individual's completion of the
3085	applicable continuing education requirement described in Subsection (3);
3086	(iii) provides to the department evidence that the individual meets the recommending
3087	qualifications;
3088	(iv) for an applicant on or after November 1, 2021, provides to the department the
3089	information described in Subsection (10)(a); and
3090	(v) pays the department a fee in an amount that:
3091	(A) the department sets, in accordance with Section 63J-1-504; and
3092	(B) does not exceed \$300 for an initial registration.
3093	(b) The department may not register an individual as a qualified medical provider if
3094	the individual is:
3095	(i) a pharmacy medical provider; or
3096	(ii) an owner, officer, director, board member, employee, or agent of a cannabis
3097	production establishment, a medical cannabis pharmacy, or a medical cannabis courier.
3098	(3) (a) An individual shall complete the continuing education described in this
3099	Subsection (3) in the following amounts:
3100	(i) for an individual as a condition precedent to registration, four hours; and

every two years.

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(ii) for a qualified medical provider as a condition precedent to renewal, four hours

3103	(b) In accordance with Subsection (3)(a), a qualified medical provider shall:
3104	(i) complete continuing education:
3105	(A) regarding the topics described in Subsection (3)(d); and
3106	(B) offered by the department under Subsection (3)(c) or an accredited or approved
3107	continuing education provider that the department recognizes as offering continuing
3108	education appropriate for the recommendation of cannabis to patients; and
3109	(ii) make a continuing education report to the department in accordance with a
3110	process that the department establishes by rule, in accordance with Title 63G, Chapter 3,
3111	Utah Administrative Rulemaking Act, and in collaboration with the Division of Professional
3112	Licensing and:
3113	(A) for a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing
3114	Act, the Podiatric Physician Board;
3115	(B) for an advanced practice registered nurse licensed under Title 58, Chapter 31b,
3116	Nurse Practice Act, the Board of Nursing;
3117	(C) for a qualified medical provider licensed under Title 58, Chapter 67, Utah Medical
3118	Practice Act, the Physicians Licensing Board;
3119	(D) for a qualified medical provider licensed under Title 58, Chapter 68, Utah
3120	Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board
3121	and
3122	(E) for a physician assistant licensed under Title 58, Chapter 70a, Utah Physician
3123	Assistant Act, the Physician Assistant Licensing Board.
3124	(c) The department may, in consultation with the Division of Professional Licensing,
3125	develop the continuing education described in this Subsection (3).
3126	(d) The continuing education described in this Subsection (3) may discuss:
3127	(i) the provisions of this [chapter] <u>part</u> ;
3128	(ii) general information about medical cannabis under federal and state law;
3129	(iii) the latest scientific research on the endocannabinoid system and medical
3130	cannabis, including risks and benefits;
3131	(iv) recommendations for medical cannabis as it relates to the continuing care of a
3132	patient in pain management, risk management, potential addiction, or palliative care; and
3133	(v) best practices for recommending the form and dosage of medical cannabis
3134	products based on the qualifying condition underlying a medical cannabis recommendation.

- 3135 (4) (a) Except as provided in Subsection (4)(b), a qualified medical provider may not 3136 recommend a medical cannabis treatment to more than 275 of the qualified medical 3137 provider's patients at the same time, as determined by the number of medical cannabis cards 3138 under the qualified medical provider's name in the state electronic verification system.
 - (b) A qualified medical provider may recommend a medical cannabis treatment to up to 600 of the qualified medical provider's patients at any given time, as determined by the number of medical cannabis cards under the qualified medical provider's name in the state electronic verification system, if:
 - (i) the appropriate American medical board has certified the qualified medical provider in the specialty of anesthesiology, gastroenterology, neurology, oncology, pain, hospice and palliative medicine, physical medicine and rehabilitation, rheumatology, endocrinology, or psychiatry; or
 - (ii) a licensed business employs or contracts with the qualified medical provider for the specific purpose of providing hospice and palliative care.
 - (5) A recommending medical provider may recommend medical cannabis to an individual under this [chapter] part only in the course of a provider-patient relationship after the recommending medical provider has completed and documented in the patient's medical record a thorough assessment of the patient's condition and medical history based on the appropriate standard of care for the patient's condition.
 - (6) (a) Except as provided in Subsection (6)(b), an individual may not advertise that the individual recommends a medical cannabis treatment.
 - (b) Notwithstanding Subsection (6)(a) and subject to Section 26-61a-116, a qualified medical provider or clinic or office that employs a qualified medical provider may advertise the following:
 - (i) a green cross;

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- (ii) the provider's or clinic's name and logo;
- (iii) a qualifying condition that the individual treats;
- 3162 (iv) that the individual is registered as a qualified medical provider and recommends 3163 medical cannabis; or
 - (v) a scientific study regarding medical cannabis use.
- 3165 (7) (a) A qualified medical provider registration card expires two years after the day on which the department issues the card.

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3167	(b) The department shall renew a qualified medical provider's registration card if the
3168	provider:
3169	(i) applies for renewal;
3170	(ii) is eligible for a qualified medical provider registration card under this section,
3171	including maintaining an unrestricted license under the recommending qualifications;
3172	(iii) certifies to the department in a renewal application that the information in
3173	Subsection (2)(a) is accurate or updates the information;
3174	(iv) submits a report detailing the completion of the continuing education requirement
3175	described in Subsection (3); and
3176	(v) pays the department a fee in an amount that:
3177	(A) the department sets, in accordance with Section 63J-1-504; and
3178	(B) does not exceed \$50 for a registration renewal.
3179	(8) The department may revoke the registration of a qualified medical provider who
3180	fails to maintain compliance with the requirements of this section.
3181	(9) A recommending medical provider may not receive any compensation or benefit
3182	for the qualified medical provider's medical cannabis treatment recommendation from:
3183	(a) a cannabis production establishment or an owner, officer, director, board member
3184	employee, or agent of a cannabis production establishment;
3185	(b) a medical cannabis pharmacy or an owner, officer, director, board member,
3186	employee, or agent of a medical cannabis pharmacy; or
3187	(c) a recommending medical provider or pharmacy medical provider.
3188	(10) (a) On or before November 1, 2021, a qualified medical provider shall report to
3189	the department, in a manner designated by the department:
3190	(i) if applicable, that the qualified medical provider or the entity that employs the
3191	qualified medical provider represents online or on printed material that the qualified medical
3192	provider is a qualified medical provider or offers medical cannabis recommendations to
3193	patients; and
3194	(ii) the fee amount that the qualified medical provider or the entity that employs the
3195	qualified medical provider charges a patient for a medical cannabis recommendation, either
3196	as an actual cash rate or, if the provider or entity bills insurance, an average cash rate.

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(b) The department shall:

(i) ensure that the following information related to qualified medical providers and

- entities described in Subsection (10)(a)(i) is available on the department's website or on the health care price transparency tool under Subsection (10)(b)(ii):
- 3201 (A) the name of the qualified medical provider and, if applicable, the name of the 3202 entity that employs the qualified medical provider;
- 3203 (B) the address of the qualified medical provider's office or, if applicable, the entity 3204 that employs the qualified medical provider; and
 - (C) the fee amount described in Subsection (10)(a)(ii); and
- 3206 (ii) share data collected under this Subsection (10) with the state auditor for use in the 3207 health care price transparency tool described in Section 67-3-11.

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- [26-61a-107.] <u>26B-4-205.</u> Standard of care -- Physicians and pharmacists not liable -- No private right of action.
- (1) An individual described in Subsection (2) is not subject to the following solely for violating a federal law or regulation that would otherwise prohibit recommending, prescribing, or dispensing medical cannabis, a medical cannabis product, or a cannabis-based drug that the United States Food and Drug Administration has not approved:
- 3215 (a) civil or criminal liability; or
- 3216 (b) licensure sanctions under Title 58, Chapter 17b, Pharmacy Practice Act, Title 58, 3217 Chapter 31b, Nurse Practice Act, Title 58, Chapter 67, Utah Medical Practice Act, Title 58,
- Chapter 68, Utah Osteopathic Medical Practice Act, or Title 58, Chapter 70a, Utah Physician
 Assistant Act.
- 3220 (2) The limitations of liability described in Subsection (1) apply to:
- (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act,
 an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice
 Act, a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58,
- 3223 Act, a physician licensed under Title 30, Chapter 07, Otah Medical Fractice Act, of Title 30,
- Chapter 68, Utah Osteopathic Medical Practice Act, or a physician assistant licensed under
- 3225 Title 58, Chapter 70a, Utah Physician Assistant Act:
- 3226 (i) (A) whom the department has registered as a qualified medical provider; or
- 3227 (B) who makes a recommendation as a limited medical provider; and
- 3228 (ii) who recommends treatment with cannabis in a medicinal dosage form or a 3229 cannabis product in a medicinal dosage form to a patient in accordance with this [chapter]
- 3230 part; and

3231	(b) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act:
3232	(i) whom the department has registered as a pharmacy medical provider; and
3233	(ii) who dispenses, in a medical cannabis pharmacy, treatment with cannabis in a
3234	medicinal dosage form or a cannabis product in a medicinal dosage form to a medical
3235	cannabis cardholder in accordance with this [chapter] part.
3236	(3) Nothing in this section or [chapter] part reduces or in any way negates the duty of
3237	an individual described in Subsection (2) to use reasonable and ordinary care in the
3238	treatment of a patient:
3239	(a) who may have a qualifying condition; and
3240	(b) (i) for whom the individual described in Subsection (2)(a)(i) or (ii) has
3241	recommended or might consider recommending a treatment with cannabis or a cannabis
3242	product; or
3243	(ii) with whom the pharmacist described in Subsection (2)(b) has interacted in the
3244	dosing or dispensing of cannabis or a cannabis product.
3245	(4) (a) As used in this Subsection (4), "healthcare facility" means the same as that
3246	term is defined in Section 26-21-2.
3247	(b) A healthcare facility may adopt restrictions on the possession, use, and storage of
3248	medical cannabis on the premises of the healthcare facility by a medical cannabis cardholder
3249	who resides at or is actively receiving treatment or care at the healthcare facility.
3250	(c) An employee or agent of a healthcare facility described in this Subsection (4) is
3251	not subject to civil or criminal liability for carrying out employment duties, including:
3252	(i) providing or supervising care to a medical cannabis cardholder; or
3253	(ii) in accordance with a caregiver designation under Section 26-61a-202 for a
3254	medical cannabis cardholder residing at the healthcare facility, purchasing, transporting, or
3255	possessing medical cannabis for the relevant patient and in accordance with the designation.
3256	(d) Nothing in this section requires a healthcare facility to adopt a restriction under
3257	Subsection (4)(b).
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3259	[26-61a-108.] <u>26B-4-206.</u> Agreement with a tribe.
3260	(1) As used in this section, "tribe" means a federally recognized Indian tribe or Indian

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(2) (a) In accordance with this section, the governor may enter into an agreement with

- a tribe to allow for the operation of a medical cannabis pharmacy on tribal land located within 3263 3264 the state. 3265 (b) An agreement described in Subsection (2)(a) may not exempt any person from the requirements of this [chapter] part. 3266 3267 (c) The governor shall ensure that an agreement described in Subsection (2)(a): 3268 (i) is in writing; 3269 (ii) is signed by: (A) the governor; and 3270 3271 (B) the governing body of the tribe that the tribe designates and has the authority to 3272 bind the tribe to the terms of the agreement; 3273 (iii) states the effective date of the agreement; 3274 (iv) provides that the governor shall renegotiate the agreement if the agreement is or 3275 becomes inconsistent with a state statute; and 3276 (v) includes any accommodation that the tribe makes: 3277 (A) to which the tribe agrees; and 3278 (B) that is reasonably related to the agreement. 3279 (d) Before executing an agreement under this Subsection (2), the governor shall 3280 consult with the department. 3281 (e) At least 30 days before the execution of an agreement described in this 3282 Subsection (2), the governor or the governor's designee shall provide a copy of the 3283 agreement in the form in which the agreement will be executed to: 3284 (i) the chairs of the Native American Legislative Liaison Committee; and 3285 (ii) the Office of Legislative Research and General Counsel. 3286 [26-61a-111.] 26B-4-207. Nondiscrimination for medical care or government 3287 employment -- Notice to prospective and current public employees -- No effect on 3288 3289 private employers. (1) For purposes of medical care, including an organ or tissue transplant, a patient's 3290
 - use, in accordance with this [chapter] part, of cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
- 3293 (a) is considered the equivalent of the authorized use of any other medication used at 3294 the discretion of a physician; and

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- 3295 (b) does not constitute the use of an illicit substance or otherwise disqualify an 3296 individual from needed medical care.
 - (2) (a) Notwithstanding any other provision of law and except as provided in Subsection (2)(b), the state or any political subdivision shall treat:
 - (i) an employee's use of medical cannabis in accordance with this [chapter] part or Section 58-37-3.7 in the same way the state or political subdivision treats employee use of any prescribed controlled substance; and
 - (ii) an employee's status as a medical cannabis cardholder or an employee's medical cannabis recommendation from a qualified medical provider or limited provider in the same way the state or political subdivision treats an employee's prescriptions for any prescribed controlled substance.
 - (b) A state or political subdivision employee who has a valid medical cannabis card is not subject to retaliatory action, as that term is defined in Section 67-19a-101, for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis.
 - (c) Subsections (2)(a) and (b) do not apply:
 - (i) where the application of Subsection (2)(a) or (b) would jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position;
 - (ii) if the employee's position is dependent on a license or peace of ficer certification that is subject to federal regulations, including 18 U.S.C. Sec. 922(g)(3); or
 - (iii) if an employee described in Subsections 34A-2-102(1)(h)(ii) through (vi) uses medical cannabis during the 12 hours immediately preceding the employee's shift or during the employee's shift.
 - (3) (a) (i) A state employer or a political subdivision employer shall take the action described in Subsection (3)(a)(ii) before:
 - (A) giving to a current employee an assignment or duty that arises from or directly relates to an obligation under this [chapter] part; or
- 3324 (B) hiring a prospective employee whose assignments or duties would include an 3325 assignment or duty that arises from or directly relates to an obligation under this [chapter] 3326 part .

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	WORKING DRAFT FOR DISCUSSION FOR COSES ONLY
3327	(ii) The employer described in Subsection (3)(a)(i) shall give the employee or
3328	prospective employee described in Subsection (3)(a)(i) a written notice that notifies the
3329	employee or prospective employee:
3330	(A) that the employee's or prospective employee's job duties may require the
3331	employee or prospective employee to engage in conduct which is in violation of the criminal
3332	laws of the United States; and
3333	(B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i).

- (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i), although the employee or prospective employee is entitled to the protections of Title 67, Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to carry out an assignment or duty that may be a violation of the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis.
- (b) The Division of Human Resource Management shall create, revise, and publish the form of the notice described in Subsection (3)(a).
- (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice described in Subsection (3)(a) may not:
- (i) claim in good faith that the employee's actions violate or potentially violate the laws of the United States with respect to the manufacture, sale, or distribution of cannabis; or
- (ii) refuse to carry out a directive that the employee reasonably believes violates the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis.
- (d) An employer may not take retaliatory action as defined in Section 67-19a-101 against a current employee who refuses to sign the notice described in Subsection (3)(a).
- (4) Nothing in this section requires a private employer to accommodate the use of medical cannabis or affects the ability of a private employer to have policies restricting the use of medical cannabis by applicants or employees.

[26-61a-112.] <u>26B-4-208.</u> No insurance requirement.

Nothing in this [chapter] <u>part</u> requires an insurer, a third-party administrator, or an employer to pay or reimburse for cannabis, a cannabis product, or a medical cannabis device.

[26-61a-113.] <u>26B-4-209.</u> No effect on use of hemp extract -- Cannabidiol --

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- 3360 (1) Nothing in this [chapter] part prohibits an individual from purchasing, selling, 3361 possessing, or using a cannabinoid product in accordance with Section 4-41-402.
- 3362 (2) Nothing in this [chapter] part restricts or otherwise affects the prescription,
 3363 distribution, or dispensing of a product that the United States Food and Drug Administration
 3364 has approved.

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[26-61a-114.] <u>26B-4-210.</u> Severability clause.

- (1) If any provision of this title or Laws of Utah 2018, Third Special Session, Chapter 1 or the application of any provision of this title or Laws of Utah 2018, Third Special Session, Chapter 1 to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remaining provisions of this title and Laws of Utah 2018, Third Special Session, Chapter 1 remain effective without the invalidated provision or application.
- (2) The provisions of this title and Laws of Utah 2018, Third Special Session, Chapter 1 are severable.

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[26-61a-115.] <u>26B-4-211.</u> Analogous to prescribed controlled substances.

When an employee, officer, or agent of the state or a political subdivision makes a finding, determination, or otherwise considers an individual's possession or use of cannabis, a cannabis product, or a medical cannabis device, the employee, officer, or agent may not consider the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance, if the individual's possession or use complies with:

- 3381 (1) this [chapter] part;
 - (2) Title 4, Chapter 41a, Cannabis Production Establishments; or
 - (3) Subsection 58-37-3.7(2) or (3).

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[26-61-103.] <u>26B-4-212.</u> Institutional review board -- Approved study of cannabis, a cannabinoid product, or an expanded cannabinoid product.

- (1) As used in this section:
 - (a) "Approved study" means a medical research study:
- (i) the purpose of which is to investigate the medical benefits and risks of cannabinoid

3390 products; and

3391	(ii) that is approved by an IRB.
3392	(b) "Board" means the Cannabis Research Review Board created in Section
3393	<u>26-61-201.</u>
3394	(c) "Cannabinoid product" means the same as that term is defined in Section
3395	<u>58-37-3.6.</u>
3396	(d) "Cannabis" means the same as that term is defined in Section 58-37-3.6.
3397	(e) "Expanded cannabinoid product" means the same as that term is defined in
3398	Section 58-37-3.6.
3399	(f) "Institutional review board" or "IRB" means an institutional review board that is
3400	registered for human subject research by the United States Department of Health and
3401	Human Services.
3402	(1) A person conducting an approved study may, for the purposes of the study:
3403	(a) process a cannabinoid product or an expanded cannabinoid product;
3404	(b) possess a cannabinoid product or an expanded cannabinoid product; and
3405	(c) administer a cannabinoid product, or an expanded cannabinoid product to an
3406	individual in accordance with the approved study.
3407	(2) A person conducting an approved study may:
3408	(a) import cannabis, a cannabinoid product, or an expanded cannabinoid product
3409	from another state if:
3410	(i) the importation complies with federal law; and
3411	(ii) the person uses the cannabis, cannabinoid product, or expanded cannabinoid
3412	product in accordance with the approved study; or
3413	(b) obtain cannabis, a cannabinoid product, or an expanded cannabinoid product
3414	from the National Institute on Drug Abuse.
3415	(3) A person conducting an approved study may distribute cannabis, a cannabinoid
3416	product, or an expanded cannabinoid product outside the state if:
3417	(a) the distribution complies with federal law; and
3418	(b) the distribution is for the purposes of, and in accordance with, the approved study.
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3420	[26-61a-201.] <u>26B-4-213.</u> Medical cannabis patient card Medical cannabis
3421	guardian card Conditional medical cannabis card Application Fees Studies.
3422	(1) (a) The department shall, within 15 days after the day on which an individual who

satisfies the eligibility criteria in this section or Section 26-61a-202 submits an application in 3423 3424 accordance with this section or Section 26-61a-202:

- (i) issue a medical cannabis patient card to an individual described in Subsection 3425 (2)(a);3426
- 3427 (ii) issue a medical cannabis guardian card to an individual described in Subsection 3428 (2)(b);
 - (iii) issue a provisional patient card to a minor described in Subsection (2)(c); and
- 3430 (iv) issue a medical cannabis caregiver card to an individual described in Subsection 3431 26-61a-202(4).
 - (b) (i) Beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of facilitating a conditional medical cannabis card under this Subsection (1)(b), upon the entry of a recommending medical provider's medical cannabis recommendation for a patient in the state electronic verification system, either by the provider or the provider's employee or by a medical cannabis pharmacy medical provider or medical cannabis pharmacy in accordance with Subsection 26-61a-501(10)(a), the department shall issue to the patient an electronic conditional medical cannabis card, in accordance with this Subsection (1)(b).
 - (ii) A conditional medical cannabis card is valid for the lesser of:
- 3441 (A) 60 days; or

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- (B) the day on which the department completes the department's review and issues a medical cannabis card under Subsection (1)(a), denies the patient's medical cannabis card application, or revokes the conditional medical cannabis card under Subsection (8).
- (iii) The department may issue a conditional medical cannabis card to an individual applying for a medical cannabis patient card for which approval of the Compassionate Use Board is not required.
- (iv) An individual described in Subsection (1)(b)(iii) has the rights, restrictions, and obligations under law applicable to a holder of the medical cannabis card for which the individual applies and for which the department issues the conditional medical cannabis card.
 - (2) (a) An individual is eligible for a medical cannabis patient card if:
- 3452 (i) (A) the individual is at least 21 years old; or
- 3453 (B) the individual is 18, 19, or 20 years old, the individual petitions the Compassionate 3454 Use Board under Section 26-61a-105, and the Compassionate Use Board recommends

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3455	department approval of the petition;
3456	(ii) the individual is a Utah resident;
3457	(iii) the individual's recommending medical provider recommends treatment with
3458	medical cannabis in accordance with Subsection (4);
3459	(iv) the individual signs an acknowledgment stating that the individual received the
3460	information described in Subsection (9); and
3461	(v) the individual pays to the department a fee in an amount that, subject to
3462	Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.
3463	(b) (i) An individual is eligible for a medical cannabis guardian card if the individual:
3464	(A) is at least 18 years old;
3465	(B) is a Utah resident;
3466	(C) is the parent or legal guardian of a minor for whom the minor's qualified medical
3467	provider recommends a medical cannabis treatment, the individual petitions the
3468	Compassionate Use Board under Section 26-61a-105, and the Compassionate Use Board
3469	recommends department approval of the petition;
3470	(D) the individual signs an acknowledgment stating that the individual received the
3471	information described in Subsection (9);
3472	(E) pays to the department a fee in an amount that, subject to Subsection
3473	26-61a-109(5), the department sets in accordance with Section 63J-1-504, plus the cost of
3474	the criminal background check described in Section 26-61a-203; and
3475	(F) the individual has not been convicted of a misdemeanor or felony drug distribution
3476	offense under either state or federal law, unless the individual completed any imposed
3477	sentence six months or more before the day on which the individual applies for a medical
3478	cannabis guardian card.
3479	(ii) The department shall notify the Department of Public Safety of each individual that
3480	the department registers for a medical cannabis guardian card.
3481	(c) (i) A minor is eligible for a provisional patient card if:
3482	(A) the minor has a qualifying condition;
3483	(B) the minor's qualified medical provider recommends a medical cannabis treatment
3484	to address the minor's qualifying condition;

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Board under Section 26-61a-105, and the Compassionate Use Board recommends

(C) one of the minor's parents or legal guardians petitions the Compassionate Use

3487 department approval of the petition; and

- (D) the minor's parent or legal guardian is eligible for a medical cannabis guardian card under Subsection (2)(b) or designates a caregiver under Subsection (2)(d) who is eligible for a medical cannabis caregiver card under Section 26-61a-202.
- (ii) The department shall automatically issue a provisional patient card to the minor described in Subsection (2)(c)(i) at the same time the department issues a medical cannabis guardian card to the minor's parent or legal guardian.
- (d) Beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of servicing the designation, if the parent or legal guardian of a minor described in Subsections (2)(c)(i)(A) through (C) does not qualify for a medical cannabis guardian card under Subsection (2)(b), the parent or legal guardian may designate up to two caregivers in accordance with Subsection 26-61a-202(1)(c) to ensure that the minor has adequate and safe access to the recommended medical cannabis treatment.
- (3) (a) An individual who is eligible for a medical cannabis card described in Subsection (2)(a) or (b) shall submit an application for a medical cannabis card to the department:
- (i) through an electronic application connected to the state electronic verification system;
 - (ii) with the recommending medical provider; and
 - (iii) with information including:
 - (A) the applicant's name, gender, age, and address;
 - (B) the number of the applicant's valid form of photo identification;
- (C) for a medical cannabis guardian card, the name, gender, and age of the minor receiving a medical cannabis treatment under the cardholder's medical cannabis guardian card; and
- (D) for a provisional patient card, the name of the minor's parent or legal guardian who holds the associated medical cannabis guardian card.
- (b) The department shall ensure that a medical cannabis card the department issues under this section contains the information described in Subsection (3)(a)(iii).
- (c) (i) If a recommending medical provider determines that, because of age, illness, or disability, a medical cannabis patient cardholder requires assistance in administering the

medical cannabis treatment that the recommending medical provider recommends, the 3519 3520 recommending medical provider may indicate the cardholder's need in the state electronic verification system, either directly or, for a limited medical provider, through the order 3521 3522 described in Subsections 26-61a-106(1)(c) and (d).

- 3523 (ii) If a recommending medical provider makes the indication described in Subsection (3)(c)(i): 3524
 - (A) the department shall add a label to the relevant medical cannabis patient card indicating the cardholder's need for assistance:
 - (B) any adult who is 18 years old or older and who is physically present with the cardholder at the time the cardholder needs to use the recommended medical cannabis treatment may handle the medical cannabis treatment and any associated medical cannabis device as needed to assist the cardholder in administering the recommended medical cannabis treatment; and
 - (C) an individual of any age who is physically present with the cardholder in the event of an emergency medical condition, as that term is defined in Section 31A-1-301, may handle the medical cannabis treatment and any associated medical cannabis device as needed to assist the cardholder in administering the recommended medical cannabis treatment.
 - (iii) A non-cardholding individual acting under Subsection (3)(c)(ii)(B) or (C) may not:
 - (A) ingest or inhale medical cannabis:

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- (B) possess, transport, or handle medical cannabis or a medical cannabis device outside of the immediate area where the cardholder is present or with an intent other than to provide assistance to the cardholder; or
- (C) possess, transport, or handle medical cannabis or a medical cannabis device when the cardholder is not in the process of being dosed with medical cannabis.
- (4) To recommend a medical cannabis treatment to a patient or to renew a recommendation, a recommending medical provider shall:
- (a) before recommending or renewing a recommendation for medical cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
- (i) verify the patient's and, for a minor patient, the minor patient's parent or legal guardian's valid form of identification described in Subsection (3)(a);
- 3549 (ii) review any record related to the patient and, for a minor patient, the patient's parent or legal quardian in: 3550

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING DRAFT FOR DISCUSSION FURPOSES ONLY
3551	(A) for a qualified medical provider, the state electronic verification system; and
3552	(B) the controlled substance database created in Section 58-37f-201; and
3553	(iii) consider the recommendation in light of the patient's qualifying condition, history
3554	of substance use or opioid use disorder, and history of medical cannabis and controlled
3555	substance use during an initial face-to-face visit with the patient; and
3556	(b) state in the recommending medical provider's recommendation that the patient:
3557	(i) suffers from a qualifying condition, including the type of qualifying condition; and
3558	(ii) may benefit from treatment with cannabis in a medicinal dosage form or a
3559	cannabis product in a medicinal dosage form.
3560	(5) (a) Except as provided in Subsection (5)(b) or (c), a medical cannabis card that
3561	the department issues under this section is valid for the lesser of:
3562	(i) an amount of time that the recommending medical provider determines; or
3563	(ii) (A) six months for the first issuance, and, except as provided in Subsection
3564	(5)(a)(ii)(B), for a renewal; or
3565	(B) for a renewal, one year if, after at least one year following the issuance of the
3566	original medical cannabis card, the recommending medical provider determines that the
3567	patient has been stabilized on the medical cannabis treatment and a one-year renewal
3568	period is justified.
3569	(b) (i) A medical cannabis card that the department issues in relation to a terminal
3570	illness described in Section 26-61a-104 expires after one year.
3571	(ii) The recommending medical provider may revoke a recommendation that the
3572	provider made in relation to a terminal illness described in Section 26-61a-104 if the medical
3573	cannabis cardholder no longer has the terminal illness.
3574	(c) A medical cannabis card that the department issues in relation to acute pain as
3575	described in Section 26-61a-104 expires 30 days after the day on which the department first
3576	issues a conditional or full medical cannabis card.
3577	(6) (a) A medical cannabis patient card or a medical cannabis guardian card is
3578	renewable if:
3579	(i) at the time of renewal, the cardholder meets the requirements of Subsection (2)(a)
3580	or (b); or

the Compassionate Use Board under Section 26-61a-105.

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(ii) the cardholder received the medical cannabis card through the recommendation of

- 3583 (b) The recommending medical provider who made the underlying recommendation 3584 for the card of a cardholder described in Subsection (6)(a) may renew the cardholder's card 3585 through phone or video conference with the cardholder, at the recommending medical 3586 provider's discretion.
 - (c) Before having access to a renewed card, a cardholder under Subsection (2)(a) or (b) shall pay to the department a renewal fee in an amount that:
 - (i) subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and
- 3591 (ii) may not exceed the cost of the relatively lower administrative burden of renewal in comparison to the original application process.
 - (d) If a minor meets the requirements of Subsection (2)(c), the minor's provisional patient card renews automatically at the time the minor's parent or legal guardian renews the parent or legal guardian's associated medical cannabis guardian card.
 - (7) (a) A cardholder under this section shall carry the cardholder's valid medical cannabis card with the patient's name.
 - (b) (i) A medical cannabis patient cardholder or a provisional patient cardholder may purchase, in accordance with this chapter and the recommendation underlying the card, cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device.
 - (ii) A cardholder under this section may possess or transport, in accordance with this chapter and the recommendation underlying the card, cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device.
 - (iii) To address the qualifying condition underlying the medical cannabis treatment recommendation:
 - (A) a medical cannabis patient cardholder or a provisional patient cardholder may use cannabis in a medicinal dosage form, a medical cannabis product in a medicinal dosage form, or a medical cannabis device; and
 - (B) a medical cannabis guardian cardholder may assist the associated provisional patient cardholder with the use of cannabis in a medicinal dosage form, a medical cannabis product in a medicinal dosage form, or a medical cannabis device.
 - (8) The department may revoke a medical cannabis card that the department issues under this section if the cardholder:

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3615 (a) violates this chapter; or

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- 3616 (b) is convicted under state or federal law of, after March 17, 2021, a drug distribution offense.
- 3618 (9) The department shall establish by rule, in accordance with Title 63G, Chapter 3,
 3619 Utah Administrative Rulemaking Act, a process to provide information regarding the following
 3620 to an individual receiving a medical cannabis card:
 - (a) risks associated with medical cannabis treatment;
- 3622 (b) the fact that a condition's listing as a qualifying condition does not suggest that
 3623 medical cannabis treatment is an effective treatment or cure for that condition, as described
 3624 in Subsection 26-61a-104(1); and
 - (c) other relevant warnings and safety information that the department determines.
- 3626 (10) The department may establish procedures by rule, in accordance with Title 63G, 3627 Chapter 3, Utah Administrative Rulemaking Act, to implement the application and issuance 3628 provisions of this section.
 - (11) (a) On or before September 1, 2021, the department shall establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a process to allow an individual from another state to register with the department in order to purchase medical cannabis or a medical cannabis device from a medical cannabis pharmacy while the individual is visiting the state.
- 3634 (b) The department may only provide the registration process described in Subsection 3635 (11)(a):
 - (i) to a nonresident patient; and
- 3637 (ii) for no more than two visitation periods per calendar year of up to 21 calendar days per visitation period.
 - (12) (a) A person may submit to the department a request to conduct a research study using medical cannabis cardholder data that the state electronic verification system contains.
 - (b) The department shall review a request described in Subsection (12)(a) to determine whether an institutional review board, as that term is defined in Section 26-61-102, could approve the research study.
- 3645 (c) At the time an individual applies for a medical cannabis card, the department shall notify the individual:

- (i) of how the individual's information will be used as a cardholder;
 (ii) that by applying for a medical cannabis card, unless the individual withdraws
 consent under Subsection (12)(d), the individual consents to the use of the individual's
 information for external research; and
 (iii) that the individual may withdraw consent for the use of the individual's inform
 - (iii) that the individual may withdraw consent for the use of the individual's information for external research at any time, including at the time of application.
 - (d) An applicant may, through the medical cannabis card application, and a medical cannabis cardholder may, through the state central patient portal, withdraw the applicant's or cardholder's consent to participate in external research at any time.
 - (e) The department may release, for the purposes of a study described in this Subsection (12), information about a cardholder under this section who consents to participate under Subsection (12)(c).
 - (f) If an individual withdraws consent under Subsection (12)(d), the withdrawal of consent:
 - (i) applies to external research that is initiated after the withdrawal of consent; and
 - (ii) does not apply to research that was initiated before the withdrawal of consent.
 - (g) The department may establish standards for a medical research study's validity, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (13) The department shall record the issuance or revocation of a medical cannabis card under this section in the controlled substance database.

[26-61a-202.] <u>26B-4-214.</u> Medical cannabis caregiver card -- Registration -- Renewal -- Revocation.

- (1) (a) A cardholder described in Section 26-61a-201 may designate, through the state central patient portal, up to two individuals, or an individual and a facility in accordance with Subsection (1)(b), to serve as a designated caregiver for the cardholder.
- (b) (i) Beginning on the earlier of September 1, 2021, or the date on which the electronic verification system is functionally capable of servicing the designation, a cardholder described in Section 26-61a-201 may designate one of the following types of facilities as one of the caregivers described in Subsection (1)(a):
- 3677 (A) for a patient or resident, an assisted living facility, as that term is defined in Section 26-21-2;

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- (B) for a patient or resident, a nursing care facility, as that term is defined in Section 3679 3680 26-21-2; or
 - (C) for a patient, a general acute hospital, as that term is defined in Section 26-21-2.
- 3682 (ii) A facility may:

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- 3683 (A) assign one or more employees to assist patients with medical cannabis treatment under the caregiver designation described in this Subsection (1)(b); and 3684
- 3685 (B) receive a medical cannabis shipment from a medical cannabis pharmacy or a medical cannabis courier on behalf of the medical cannabis cardholder within the facility who 3686 3687 designated the facility as a caregiver.
 - (iii) The department shall make rules to regulate the practice of facilities and facility employees serving as designated caregivers under this Subsection (1)(b).
 - (c) A parent or legal guardian described in Subsection 26-61a-201(2)(d), in consultation with the minor and the minor's qualified medical provider, may designate, through the state central patient portal, up to two individuals to serve as a designated caregiver for the minor, if the department determines that the parent or legal guardian is not eligible for a medical cannabis guardian card under Section 26-61a-201.
 - (d) (i) Beginning on the earlier of September 1, 2022, or the date on which the electronic verification system is functionally capable of facilitating a conditional medical cannabis caregiver card under this Subsection (1)(d), upon the entry of a caregiver designation under Subsection (1) by a patient with a terminal illness described in Section 26-61a-104, the department shall issue to the designated caregiver an electronic conditional medical cannabis caregiver card, in accordance with this Subsection (1)(d).
 - (ii) A conditional medical cannabis caregiver card is valid for the lesser of:
- 3702 (A) 60 days; or
 - (B) the day on which the department completes the department's review and issues a medical cannabis caregiver card under Subsection (1)(a), denies the patient's medical cannabis caregiver card application, or revokes the conditional medical cannabis caregiver card under Subsection (8).
 - (iii) The department may issue a conditional medical cannabis card to an individual applying for a medical cannabis patient card for which approval of the Compassionate Use Board is not required.
 - (iv) An individual described in Subsection (1)(b)(iii) has the rights, restrictions, and

3711 obligations under law applicable to a holder of the medical cannabis card for which the 3712 individual applies and for which the department issues the conditional medical cannabis card.

- (2) An individual that the department registers as a designated caregiver under this section and a facility described in Subsection (1)(b):
- (a) for an individual designated caregiver, may carry a valid medical cannabis caregiver card:
- 3717 (b) in accordance with this chapter, may purchase, possess, transport, or assist the patient in the use of cannabis in a medicinal dosage form, a cannabis product in a medicinal 3718 3719 dosage form, or a medical cannabis device on behalf of the designating medical cannabis 3720 cardholder;
 - (c) may not charge a fee to an individual to act as the individual's designated caregiver or for a service that the designated caregiver provides in relation to the role as a designated caregiver; and
 - (d) may accept reimbursement from the designating medical cannabis cardholder for direct costs the designated caregiver incurs for assisting with the designating cardholder's medicinal use of cannabis.
 - (3) (a) The department shall:

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- (i) within 15 days after the day on which an individual submits an application in compliance with this section, issue a medical cannabis card to the applicant if the applicant:
 - (A) is designated as a caregiver under Subsection (1);
 - (B) is eligible for a medical cannabis caregiver card under Subsection (4); and
 - (C) complies with this section; and
- (ii) notify the Department of Public Safety of each individual that the department registers as a designated caregiver.
- (b) The department shall ensure that a medical cannabis caregiver card contains the information described in Subsections (5)(b) and (3)(c)(i).
- (c) If a cardholder described in Section 26-61a-201 designates an individual as a caregiver who already holds a medical cannabis caregiver card, the individual with the medical cannabis caregiver card:
- (i) shall report to the department the information required of applicants under Subsection (5)(b) regarding the new designation;
- (ii) if the individual makes the report described in Subsection (3)(c)(i), is not required

3743	to file an application for another medical cannabis caregiver card;
3744	(iii) may receive an additional medical cannabis caregiver card in relation to each
3745	additional medical cannabis patient who designates the caregiver; and
3746	(iv) is not subject to an additional background check.
3747	(4) An individual is eligible for a medical cannabis caregiver card if the individual:
3748	(a) is at least 21 years old;
3749	(b) is a Utah resident;
3750	(c) pays to the department a fee in an amount that, subject to Subsection
3751	26-61a-109(5), the department sets in accordance with Section 63J-1-504, plus the cost of
3752	the criminal background check described in Section 26-61a-203;
3753	(d) signs an acknowledgment stating that the applicant received the information
3754	described in Subsection 26-61a-201(9); and
3755	(e) has not been convicted of a misdemeanor or felony drug distribution offense that
3756	is a felony under either state or federal law, unless the individual completes any imposed
3757	sentence two or more years before the day on which the individual submits the application.
3758	(5) An eligible applicant for a medical cannabis caregiver card shall:
3759	(a) submit an application for a medical cannabis caregiver card to the department
3760	through an electronic application connected to the state electronic verification system; and
3761	(b) submit the following information in the application described in Subsection (5)(a):
3762	(i) the applicant's name, gender, age, and address;
3763	(ii) the name, gender, age, and address of the cardholder described in Section
3764	26-61a-201 who designated the applicant;
3765	(iii) if a medical cannabis guardian cardholder designated the caregiver, the name,
3766	gender, and age of the minor receiving a medical cannabis treatment in relation to the
3767	medical cannabis guardian cardholder; and
3768	(iv) any additional information that the department requests to assist in matching the
3769	application with the designating medical cannabis patient.
3770	(6) Except as provided in Subsection (6)(b), a medical cannabis caregiver card that

designated the caregiver determines; or

the department issues under this section is valid for the lesser of:

(a) an amount of time that the cardholder described in Section 26-61a-201 who

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WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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3775	Section 26-61a-201 expires.
3776	(7) (a) If a designated caregiver meets the requirements of Subsection (4), the
3777	designated caregiver's medical cannabis caregiver card renews automatically at the time the
3778	cardholder described in Section 26-61a-201 who designated the caregiver:
3779	(i) renews the cardholder's card; and
3780	(ii) renews the caregiver's designation, in accordance with Subsection (7)(b).
3781	(b) The department shall provide a method in the card renewal process to allow a
3782	cardholder described in Section 26-61a-201 who has designated a caregiver to:
3783	(i) signify that the cardholder renews the caregiver's designation;
3784	(ii) remove a caregiver's designation; or
3785	(iii) designate a new caregiver.
3786	(8) The department may revoke a medical cannabis caregiver card if the designated
3787	caregiver:
3788	(a) violates this chapter; or
3789	(b) is convicted under state or federal law of:
3790	(i) a felony drug distribution offense; or
3791	(ii) after December 3, 2018, a misdemeanor drug distribution offense.
3792	(9) The department shall record the issuance or revocation of a medical cannabis
3793	card under this section in the controlled substance database.
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3795	[26-61a-203.] <u>26B-4-215.</u> Designated caregiver Guardian Criminal
3796	background check.
3797	(1) Except for an applicant reapplying for a medical cannabis card within less than
3798	one year after the expiration of the applicant's previous medical cannabis card, each
3799	applicant for a medical cannabis guardian card under Section 26-61a-201 or a medical
3800	cannabis caregiver card under Section 26-61a-202 shall:
3801	(a) submit to the department, at the time of application:
3802	(i) a fingerprint card in a form acceptable to the Department of Public Safety; and
3803	(ii) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the
3804	registration of the applicant's fingerprints in the Federal Bureau of Investigation Next
3805	Generation Identification System's Rap Back Service; and

(b) consent to a fingerprint background check by:

3807	(i) the Bureau of Criminal Identification; and
3808	(ii) the Federal Bureau of Investigation.
3809	(2) The Bureau of Criminal Identification shall:
3810	(a) check the fingerprints the applicant submits under Subsection (1)(a) against the
3811	applicable state, regional, and national criminal records databases, including the Federal
3812	Bureau of Investigation Next Generation Identification System;
3813	(b) report the results of the background check to the department;
3814	(c) maintain a separate file of fingerprints that applicants submit under Subsection
3815	(1)(a) for search by future submissions to the local and regional criminal records databases,
3816	including latent prints;
3817	(d) request that the fingerprints be retained in the Federal Bureau of Investigation
3818	Next Generation Identification System's Rap Back Service for search by future submissions
3819	to national criminal records databases, including the Next Generation Identification System
3820	and latent prints; and
3821	(e) establish a privacy risk mitigation strategy to ensure that the department only
3822	receives notifications for an individual with whom the department maintains an authorizing
3823	relationship.
3824	(3) The department shall:
3825	(a) assess an applicant who submits fingerprints under Subsection (1)(a) a fee in an
3826	amount that the department sets in accordance with Section 63J-1-504 for the services that
3827	the Bureau of Criminal Identification or another authorized agency provides under this
3828	section; and
3829	(b) remit the fee described in Subsection (3)(a) to the Bureau of Criminal
3830	Identification.
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3832	[26-61a-204.] <u>26B-4-216.</u> Medical cannabis card Patient and designated
3833	caregiver requirements Rebuttable presumption.
3834	(1) (a) A medical cannabis cardholder who possesses medical cannabis that the
3835	cardholder purchased under this chapter:
3836	(i) shall carry:
3837	(A) at all times the cardholder's medical cannabis card; and
3838	(B) with the medical cannabis, a label that identifies that the medical cannabis was

sold from a licensed medical cannabis pharmacy and includes an identification number that 3839 3840 links the medical cannabis to the inventory control system; (ii) may possess up to the legal dosage limit of: 3841 3842 (A) unprocessed cannabis in medicinal dosage form; and 3843 (B) a cannabis product in medicinal dosage form; (iii) may not possess more medical cannabis than described in Subsection (1)(a)(ii); 3844 3845 (iv) may only possess the medical cannabis in the container in which the cardholder received the medical cannabis from the medical cannabis pharmacy; and 3846 3847 (v) may not alter or remove any label described in Section 4-41a-602 from the 3848 container described in Subsection (1)(a)(iv). (b) Except as provided in Subsection (1)(c) or (e), a medical cannabis cardholder who 3849 3850 possesses medical cannabis in violation of Subsection (1)(a) is: (i) guilty of an infraction; and 3851 3852 (ii) subject to a \$100 fine. 3853 (c) A medical cannabis cardholder or a nonresident patient who possesses medical 3854 cannabis in an amount that is greater than the legal dosage limit and equal to or less than 3855 twice the legal dosage limit is: 3856 (i) for a first offense: (A) guilty of an infraction; and 3857 3858 (B) subject to a fine of up to \$100; and 3859 (ii) for a second or subsequent offense: 3860 (A) guilty of a class B misdemeanor; and 3861 (B) subject to a fine of \$1,000. (d) An individual who is guilty of a violation described in Subsection (1)(b) or (c) is not 3862 3863 guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct 3864 underlying the penalty described in Subsection (1)(b) or (c). 3865 (e) A nonresident patient who possesses medical cannabis that is not in a medicinal dosage form is: 3866 3867 (i) for a first offense: (A) guilty of an infraction; and 3868 3869 (B) subject to a fine of up to \$100; and

(ii) for a second or subsequent offense, is subject to the penalties described in Title

- 58, Chapter 37, Utah Controlled Substances Act. 3871
- (f) A medical cannabis cardholder or a nonresident patient who possesses medical 3872 cannabis in an amount that is greater than twice the legal dosage limit is subject to the 3873 3874 penalties described in Title 58, Chapter 37, Utah Controlled Substances Act.
 - (2) (a) As used in this Subsection (2), "emergency medical condition" means the same as that term is defined in Section 31A-1-301.
 - (b) Except as described in Subsection (2)(c), a medical cannabis patient cardholder, a provisional patient cardholder, or a nonresident patient may not use, in public view, medical cannabis or a cannabis product.
 - (c) In the event of an emergency medical condition, an individual described in Subsection (2)(b) may use, and the holder of a medical cannabis guardian card or a medical cannabis caregiver card may administer to the cardholder's charge, in public view, cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form.
 - (d) An individual described in Subsection (2)(b) who violates Subsection (2)(b) is:
 - (i) for a first offense:

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- (A) guilty of an infraction; and
- (B) subject to a fine of up to \$100; and
- (ii) for a second or subsequent offense:
- (A) guilty of a class B misdemeanor; and
- (B) subject to a fine of \$1,000.
- (3) If a medical cannabis cardholder carrying the cardholder's card possesses cannabis in a medicinal dosage form or a cannabis product in compliance with Subsection (1), or a medical cannabis device that corresponds with the cannabis or cannabis product:
- (a) there is a rebuttable presumption that the cardholder possesses the cannabis. cannabis product, or medical cannabis device legally; and
- (b) there is no probable cause, based solely on the cardholder's possession of the cannabis in medicinal dosage form, cannabis product in medicinal dosage form, or medical cannabis device, to believe that the cardholder is engaging in illegal activity.
- (4) (a) If a law enforcement officer stops an individual who possesses cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, and the individual represents to the law enforcement officer that the individual holds a valid medical cannabis card, but the individual does not have the medical

cannabis card in the individual's possession at the time of the stop by the law enforcement officer, the law enforcement officer shall attempt to access the state electronic verification system to determine whether the individual holds a valid medical cannabis card.

- (b) If the law enforcement officer is able to verify that the individual described in Subsection (4)(a) is a valid medical cannabis cardholder, the law enforcement officer:
- (i) may not arrest or take the individual into custody for the sole reason that the individual is in possession of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device; and
 - (ii) may not seize the cannabis, cannabis product, or medical cannabis device.

[26-61a-401.] <u>26B-4-217.</u> Medical cannabis pharmacy agent -- Registration.

- (1) An individual may not serve as a medical cannabis pharmacy agent of a medical cannabis pharmacy unless the department registers the individual as a medical cannabis pharmacy agent.
 - (2) A recommending medical provider may not act as a medical cannabis pharmacy agent, have a financial or voting interest of 2% or greater in a medical cannabis pharmacy, or have the power to direct or cause the management or control of a medical cannabis pharmacy.
 - (3) (a) The department shall, within 15 days after the day on which the department receives a complete application from a medical cannabis pharmacy on behalf of a prospective medical cannabis pharmacy agent, register and issue a medical cannabis pharmacy agent registration card to the prospective agent if the medical cannabis pharmacy:
 - (i) provides to the department:
 - (A) the prospective agent's name and address;
 - (B) the name and location of the licensed medical cannabis pharmacy where the prospective agent seeks to act as the medical cannabis pharmacy agent; and
 - (C) the submission required under Subsection (3)(b); and
 - (ii) pays a fee to the department in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.
 - (b) Except for an applicant reapplying for a medical cannabis pharmacy agent registration card within less than one year after the expiration of the applicant's previous medical cannabis pharmacy agent registration card, each prospective agent described in

3935	Subsection (3)(a) shall:
3936	(i) submit to the department:
3937	(A) a fingerprint card in a form acceptable to the Department of Public Safety; and
3938	(B) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the
3939	registration of the prospective agent's fingerprints in the Federal Bureau of Investigation Next
3940	Generation Identification System's Rap Back Service; and
3941	(ii) consent to a fingerprint background check by:
3942	(A) the Bureau of Criminal Identification; and
3943	(B) the Federal Bureau of Investigation.
3944	(c) The Bureau of Criminal Identification shall:
3945	(i) check the fingerprints the prospective agent submits under Subsection (3)(b)
3946	against the applicable state, regional, and national criminal records databases, including the
3947	Federal Bureau of Investigation Next Generation Identification System;
3948	(ii) report the results of the background check to the department;
3949	(iii) maintain a separate file of fingerprints that prospective agents submit under
3950	Subsection (3)(b) for search by future submissions to the local and regional criminal records
3951	databases, including latent prints;
3952	(iv) request that the fingerprints be retained in the Federal Bureau of Investigation
3953	Next Generation Identification System's Rap Back Service for search by future submissions
3954	to national criminal records databases, including the Next Generation Identification System
3955	and latent prints; and
3956	(v) establish a privacy risk mitigation strategy to ensure that the department only
3957	receives notifications for an individual with whom the department maintains an authorizing
3958	relationship.
3959	(d) The department shall:
3960	(i) assess an individual who submits fingerprints under Subsection (3)(b) a fee in an
3961	amount that the department sets in accordance with Section 63J-1-504 for the services that
3962	the Bureau of Criminal Identification or another authorized agency provides under this
3963	section; and
3964	(ii) remit the fee described in Subsection (3)(d)(i) to the Bureau of Criminal
3965	Identification.

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(4) The department shall designate, on an individual's medical cannabis pharmacy

agent registration card the name of the medical cannabis pharmacy where the individual is registered as an agent.

- 3969 (5) A medical cannabis pharmacy agent shall comply with a certification standard that
 3970 the department develops in collaboration with the Division of Professional Licensing and the
 3971 Board of Pharmacy, or a third-party certification standard that the department designates by
 3972 rule, in collaboration with the Division of Professional Licensing and the Board of Pharmacy
 3973 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3974 (6) The department shall ensure that the certification standard described in Subsection (5) includes training in:
 - (a) Utah medical cannabis law; and

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- (b) medical cannabis pharmacy best practices.
- 3978 (7) The department may revoke the medical cannabis pharmacy agent registration card of, or refuse to issue a medical cannabis pharmacy agent registration card to, an individual who:
 - (a) violates the requirements of this chapter; or
 - (b) is convicted under state or federal law of:
 - (i) a felony within the preceding 10 years; or
- (ii) after December 3, 2018, a misdemeanor for drug distribution.
- 3985 (8) (a) A medical cannabis pharmacy agent registration card expires two years after the day on which the department issues or renews the card.
- 3987 (b) A medical cannabis pharmacy agent may renew the agent's registration card if the agent:
 - (i) is eligible for a medical cannabis pharmacy agent registration card under this section;
 - (ii) certifies to the department in a renewal application that the information in Subsection (3)(a) is accurate or updates the information; and
 - (iii) pays to the department a renewal fee in an amount that:
- 3994 (A) subject to Subsection 26-61a-109(5), the department sets in accordance with 3995 Section 63J-1-504; and
- 3996 (B) may not exceed the cost of the relatively lower administrative burden of renewal in comparison to the original application process.
 - (9) (a) As a condition precedent to registration and renewal of a medical cannabis

pharmacy agent registration card, a medical cannabis pharmacy agent shall:

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- 4000 (i) complete at least one hour of continuing education regarding patient privacy and
 4001 federal health information privacy laws that is offered by the department under Subsection
 4002 (9)(b) or an accredited or approved continuing education provider that the department
 4003 recognizes as offering continuing education appropriate for the medical cannabis pharmacy
 4004 practice; and
 - (ii) make a continuing education report to the department in accordance with a process that the department establishes by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in collaboration with the Division of Professional Licensing and the Board of Pharmacy.
 - (b) The department may, in consultation with the Division of Professional Licensing, develop the continuing education described in this Subsection (9).
 - (c) The pharmacist-in-charge described in Section 26-61a-403 shall ensure that each medical cannabis pharmacy agent working in the medical cannabis pharmacy who has access to the state electronic verification system is in compliance with this Subsection (9).

[26-61a-402.] <u>26B-4-218.</u> Medical cannabis pharmacy agent registration card -- Rebuttable presumption.

- (1) A medical cannabis pharmacy agent shall carry the individual's medical cannabis pharmacy agent registration card with the individual at all times when:
 - (a) the individual is on the premises of a medical cannabis pharmacy; and
- (b) the individual is transporting cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device between a cannabis production establishment and a medical cannabis pharmacy.
- (2) If an individual handling, at a medical cannabis pharmacy, cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device or transporting cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, possesses the cannabis, cannabis product, or medical cannabis device in compliance with Subsection (1):
- (a) there is a rebuttable presumption that the individual possesses the cannabis, cannabis product, or medical cannabis device legally; and
 - (b) there is no probable cause, based solely on the individual's possession of the

- cannabis in medicinal dosage form, cannabis product in medicinal dosage form, or medical cannabis device in compliance with Subsection (1), that the individual is engaging in illegal activity.
- 4034 (3) (a) A medical cannabis pharmacy agent who fails to carry the agent's medical cannabis pharmacy agent registration card in accordance with Subsection (1) is:
 - (i) for a first or second offense in a two-year period:
- 4037 (A) guilty of an infraction; and

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- (B) is subject to a \$100 fine; or
- 4039 (ii) for a third or subsequent offense in a two-year period:
- 4040 (A) guilty of a class C misdemeanor; and
- 4041 (B) subject to a \$750 fine.
- 4042 (b) (i) The prosecuting entity shall notify the department and the relevant medical cannabis pharmacy of each conviction under Subsection (3)(a).
 - (ii) For each violation described in Subsection (3)(a)(ii), the department may assess the relevant medical cannabis pharmacy a fine of up to \$5,000, in accordance with a fine schedule that the department establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c) An individual who is guilty of a violation described in Subsection (3)(a) is not guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct underlying the violation described in Subsection (3)(a).

[26-61a-403.] <u>26B-4-219.</u> Pharmacy medical providers -- Registration --

4053 Continuing education.

- (1) (a) A medical cannabis pharmacy:
- (i) shall employ a pharmacist who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, as a pharmacy medical provider;
 - (ii) may employ a physician who has the authority to write a prescription and is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as a pharmacy medical provider;
- (iii) shall ensure that a pharmacy medical provider described in Subsection (1)(a)(i) works onsite during all business hours; and
- (iv) shall designate one pharmacy medical provider described in Subsection (1)(a)(i)

4063 as the pharmacist-in-charge to oversee the operation of and generally supervise the medical cannabis pharmacy.

- (b) An individual may not serve as a pharmacy medical provider unless the department registers the individual as a pharmacy medical provider in accordance with Subsection (2).
- (2) (a) The department shall, within 15 days after the day on which the department receives an application from a medical cannabis pharmacy on behalf of a prospective pharmacy medical provider, register and issue a pharmacy medical provider registration card to the prospective pharmacy medical provider if the medical cannabis pharmacy:
 - (i) provides to the department:

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- (A) the prospective pharmacy medical provider's name and address;
- (B) the name and location of the licensed medical cannabis pharmacy where the prospective pharmacy medical provider seeks to act as a pharmacy medical provider;
- (C) a report detailing the completion of the continuing education requirement described in Subsection (3); and
- (D) evidence that the prospective pharmacy medical provider is a pharmacist who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, or a physician who has the authority to write a prescription and is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and
- (ii) pays a fee to the department in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.
- (b) The department may not register a recommending medical provider or a state central patient portal medical provider as a pharmacy medical provider.
- (3) (a) A pharmacy medical provider shall complete the continuing education described in this Subsection (3) in the following amounts:
 - (i) as a condition precedent to registration, four hours; and
 - (ii) as a condition precedent to renewal of the registration, four hours every two years.
 - (b) In accordance with Subsection (3)(a), the pharmacy medical provider shall:
 - (i) complete continuing education:
 - (A) regarding the topics described in Subsection (3)(d); and
- 4093 (B) offered by the department under Subsection (3)(c) or an accredited or approved continuing education provider that the department recognizes as offering continuing

4095	education appropriate for the medical cannabis pharmacy practice; and
4096	(ii) make a continuing education report to the department in accordance with a
4097	process that the department establishes by rule, in accordance with Title 63G, Chapter 3,
4098	Utah Administrative Rulemaking Act, and in collaboration with the Division of Professional
4099	Licensing and:
4100	(A) for a pharmacy medical provider who is licensed under Title 58, Chapter 17b,
4101	Pharmacy Practice Act, the Board of Pharmacy;
4102	(B) for a pharmacy medical provider licensed under Title 58, Chapter 67, Utah
4103	Medical Practice Act, the Physicians Licensing Board; and
4104	(C) for a pharmacy medical provider licensed under Title 58, Chapter 68, Utah
4105	Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board.
4106	(c) The department may, in consultation with the Division of Professional Licensing,
4107	develop the continuing education described in this Subsection (3).
4108	(d) The continuing education described in this Subsection (3) may discuss:
4109	(i) the provisions of this chapter;
4110	(ii) general information about medical cannabis under federal and state law;
4111	(iii) the latest scientific research on the endocannabinoid system and medical
4112	cannabis, including risks and benefits;
4113	(iv) recommendations for medical cannabis as it relates to the continuing care of a
4114	patient in pain management, risk management, potential addiction, and palliative care; or
4115	(v) best practices for recommending the form and dosage of a medical cannabis
4116	product based on the qualifying condition underlying a medical cannabis recommendation.
4117	(4) (a) A pharmacy medical provider registration card expires two years after the day
4118	on which the department issues or renews the card.
4119	(b) A pharmacy medical provider may renew the provider's registration card if the
4120	provider:
4121	(i) is eligible for a pharmacy medical provider registration card under this section;
4122	(ii) certifies to the department in a renewal application that the information in
4123	Subsection (2)(a) is accurate or updates the information;
4124	(iii) submits a report detailing the completion of the continuing education requirement

described in Subsection (3); and

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(iv) pays to the department a renewal fee in an amount that:

	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
4127	(A) subject to Subsection 26-61a-109(5), the department sets in accordance with
4128	Section 63J-1-504; and
4129	(B) may not exceed the cost of the relatively lower administrative burden of renewal in
4130	comparison to the original application process.
4131	(5) (a) Except as provided in Subsection (5)(b), a person may not advertise that the
4132	person or another person dispenses medical cannabis.
4133	(b) Notwithstanding Subsection (5)(a) and subject to Section 26-61a-116, a registered
4134	pharmacy medical provider may advertise the following:
4135	(i) a green cross;
4136	(ii) that the person is registered as a pharmacy medical provider and dispenses
4137	medical cannabis; or
4138	(iii) a scientific study regarding medical cannabis use.
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4140	[26-61a-701.] <u>26B-4-220.</u> Enforcement Misdemeanor.
4141	(1) Except as provided in Title 4, Chapter 41a, Cannabis Production Establishments,
4142	and Sections 26-61a-502, 26-61a-605, and 26-61a-607, it is unlawful for a medical cannabis
4143	cardholder to sell or otherwise give to another medical cannabis cardholder cannabis in a
4144	medicinal dosage form, a cannabis product in a medicinal dosage form, a medical cannabis
4145	device, or any cannabis residue remaining in or from a medical cannabis device.
4146	(2) (a) Except as provided in Subsection (2)(b), a medical cannabis cardholder who
4147	violates Subsection (1) is:
4148	(i) guilty of a class B misdemeanor; and
4149	(ii) subject to a \$1,000 fine.
4150	(b) An individual is not guilty under Subsection (2)(a) if the individual:
4151	(i) (A) is a designated caregiver; and
4152	(B) gives the product described in Subsection (1) to the medical cannabis cardholder
4153	who designated the individual as a designated caregiver; or
4154	(ii) (A) is a medical cannabis guardian cardholder; and
4155	(B) gives the product described in Subsection (1) to the relevant provisional patient
4156	cardholder.

of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct

(c) An individual who is guilty of a violation described in Subsection (2)(a) is not guilty

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- [26-61a-702.] <u>26B-4-221.</u> Enforcement -- Fine -- Citation.
- 4162 (1) (a) The department may, for a medical cannabis pharmacy's or a medical cannabis courier's violation of this chapter or an applicable administrative rule:
 - (i) revoke the medical cannabis pharmacy or medical cannabis courier license;
- 4165 (ii) refuse to renew the medical cannabis pharmacy or medical cannabis courier 4166 license; or
- 4167 (iii) assess the medical cannabis pharmacy or medical cannabis courier an administrative penalty.
 - (b) The department may, for a medical cannabis pharmacy agent's or medical cannabis courier agent's violation of this chapter:
 - (i) revoke the medical cannabis pharmacy agent or medical cannabis courier agent registration card;
 - (ii) refuse to renew the medical cannabis pharmacy agent or medical cannabis courier agent registration card; or
 - (iii) assess the medical cannabis pharmacy agent or medical cannabis courier agent an administrative penalty.
 - (2) The department shall deposit an administrative penalty imposed under this section into the General Fund.
 - (3) For a person subject to an uncontested citation, a stipulated settlement, or a finding of a violation in an adjudicative proceeding under this section, the department may:
 - (a) for a fine amount not already specified in law, assess the person a fine of up to \$5,000 per violation, in accordance with a fine schedule that the department establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
 - (b) order the person to cease and desist from the action that creates a violation.
 - (4) The department may not revoke a medical cannabis pharmacy's license or a medical cannabis courier's license without first directing the medical cannabis pharmacy or the medical cannabis courier to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
- 4189 (5) If, within 20 calendar days after the day on which the department issues a citation for a violation of this chapter, the person that is the subject of the citation fails to request a

4191 hearing to contest the citation, the citation becomes the department's final order. 4192 (6) The department may, for a person who fails to comply with a citation under this 4193 section: 4194 (a) refuse to issue or renew the person's license or agent registration card; or 4195 (b) suspend, revoke, or place on probation the person's license or agent registration card. 4196 4197 (7) (a) Except where a criminal penalty is expressly provided for a specific violation of 4198 this chapter, if an individual violates a provision of this chapter, the individual is: 4199 (i) guilty of an infraction; and 4200 (ii) subject to a \$100 fine. (b) An individual who is guilty of a violation described in Subsection (7)(a) is not guilty 4201 4202 of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct 4203 underlying the violation described in Subsection (7)(a). 4204 4205 [26-61a-703.] 26B-4-222. Report. 4206 (1) By the November interim meeting each year beginning in 2020, the department 4207 shall report to the Health and Human Services Interim Committee on: 4208 (a) the number of applications and renewal applications filed for medical cannabis 4209 cards: 4210 (b) the number of qualifying patients and designated caregivers: 4211 (c) the nature of the debilitating medical conditions of the qualifying patients; 4212 (d) the age and county of residence of cardholders; 4213 (e) the number of medical cannabis cards revoked; 4214 (f) the number of practitioners providing recommendations for qualifying patients; 4215 (q) the number of license applications and renewal license applications received: 4216 (h) the number of licenses the department has issued in each county; 4217 (i) the number of licenses the department has revoked; 4218 (i) the quantity of medical cannabis shipments that the state central patient portal 4219 facilitates; 4220 (k) the number of overall purchases of medical cannabis and medical cannabis

products from each medical cannabis pharmacy;

(I) the expenses incurred and revenues generated from the medical cannabis

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	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
4223	program; and
4224	(m) an analysis of product availability in medical cannabis pharmacies.
4225	(2) The department may not include personally identifying information in the report
4226	described in this section.
4227	(3) During the 2022 legislative interim, the department shall report to the working
4228	group described in Section 36-12-8.2 as requested by the working group.
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4230	[26-61a-116.] <u>26B-4-223.</u> Advertising.
4231	(1) Except as provided in this [chapter] part, a person may not advertise regarding
4232	the recommendation, sale, dispensing, or transportation of medical cannabis.
4233	(2) Notwithstanding any authorization to advertise regarding medical cannabis under
4234	this [chapter] part, the person advertising may not advertise:
4235	(a) using promotional discounts or incentives;
4236	(b) a particular medical cannabis product, medical cannabis device, or medicinal
4237	dosage form; or
4238	(c) an assurance regarding an outcome related to medical cannabis treatment.
4239	(3) Notwithstanding Subsection (1):
4240	(a) a nonprofit organization that offers financial assistance for medical cannabis
4241	treatment to low-income patients may advertise the organization's assistance if the
4242	advertisement does not relate to a specific medical cannabis pharmacy or a specific medical
4243	cannabis product; and
4244	(b) a medical cannabis pharmacy may provide information regarding subsidies for the
4245	cost of medical cannabis treatment to patients who affirmatively accept receipt of the subsidy
4246	information.
4247	(4) To ensure that the name and logo of a licensee under this [chapter] part have a
4248	medical rather than a recreational disposition, the name and logo of the licensee:
4249	(a) may include terms and images associated with:
4250	(i) a medical disposition, including "medical," "medicinal," "medicine," "pharmacy,"
4251	"apothecary," "wellness," "therapeutic," "health," "care," "cannabis," "clinic,"

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"compassionate," "relief," "treatment," and "patient;" or

(ii) the plant form of cannabis, including "leaf," "flower," and "bloom";

- 4255 (i) any term, statement, design representation, picture, or illustration that is associated 4256 with a recreational disposition or that appeals to children;
 - (ii) an emphasis on a psychoactive ingredient;
- 4258 (iii) a specific cannabis strain; or

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- (iv) terms related to recreational marijuana, including "weed," "pot," "reefer," "grass,"
- 4260 "hash," "ganga," "Mary Jane," "high," "buzz," "haze," "stoned," "joint," "bud," "smoke,"
- 4261 "euphoria," "dank," "doobie," "kush," "frost," "cookies," "rec," "bake," "blunt," "combust,"
- 4262 "bong," "budtender," "dab," "blaze," "toke," or "420."
- 4263 (5) The department shall define standards for advertising authorized under this 4264 chapter, including names and logos in accordance with Subsection (4), to ensure a medical 4265 rather than recreational disposition.

4267 [26-61a-301.] 26B-4-224. Medical cannabis pharmacy -- License -- Eligibility.

- (1) A person may not operate as a medical cannabis pharmacy without a license that the department issues under this part.
- 4270 (2) (a) (i) Subject to Subsections (4) and (5) and to Section 26-61a-305, the
 4271 department shall issue a license to operate a medical cannabis pharmacy in accordance with
 4272 Title 63G, Chapter 6a, Utah Procurement Code.
- 4273 (ii) The department may not issue a license to operate a medical cannabis pharmacy 4274 to an applicant who is not eligible for a license under this section.
 - (b) An applicant is eligible for a license under this section if the applicant submits to the department:
 - (i) subject to Subsection (2)(c), a proposed name and address where the applicant will operate the medical cannabis pharmacy;
 - (ii) the name and address of an individual who:
- 4280 (A) for a publicly traded company, has a financial or voting interest of 2% or greater in 4281 the proposed medical cannabis pharmacy;
- 4282 (B) for a privately held company, a financial or voting interest in the proposed medical cannabis pharmacy; or
- 4284 (C) has the power to direct or cause the management or control of a proposed 4285 medical cannabis pharmacy;
- 4286 (iii) a statement that the applicant will obtain and maintain a performance bond that a

surety authorized to transact surety business in the state issues in an amount of at least \$100,000 for each application that the applicant submits to the department;

(iv) an operating plan that:

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- (A) complies with Section 26-61a-304;
- (B) includes operating procedures to comply with the operating requirements for a medical cannabis pharmacy described in this chapter and with a relevant municipal or county law that is consistent with Section 26-61a-507; and
 - (C) the department approves;
 - (v) an application fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and
 - (vi) a description of any investigation or adverse action taken by any licensing jurisdiction, government agency, law enforcement agency, or court in any state for any violation or detrimental conduct in relation to any of the applicant's cannabis-related operations or businesses.
 - (c) (i) A person may not locate a medical cannabis pharmacy:
 - (A) within 200 feet of a community location; or
- 4303 (B) in or within 600 feet of a district that the relevant municipality or county has zoned as primarily residential.
 - (ii) The proximity requirements described in Subsection (2)(c)(i) shall be measured from the nearest entrance to the medical cannabis pharmacy establishment by following the shortest route of ordinary pedestrian travel to the property boundary of the community location or residential area.
 - (iii) The department may grant a waiver to reduce the proximity requirements in Subsection (2)(c)(i) by up to 20% if the department determines that it is not reasonably feasible for the applicant to site the proposed medical cannabis pharmacy without the waiver.
 - (iv) An applicant for a license under this section shall provide evidence of compliance with the proximity requirements described in Subsection (2)(c)(i).
 - (d) The department may not issue a license to an eligible applicant that the department has selected to receive a license until the selected eligible applicant obtains the performance bond described in Subsection (2)(b)(iii).
 - (e) If the department receives more than one application for a medical cannabis pharmacy within the same city or town, the department shall consult with the local land use

- 4319 authority before approving any of the applications pertaining to that city or town. 4320 (3) If the department selects an applicant for a medical cannabis pharmacy license under this section, the department shall: 4321 4322 (a) charge the applicant an initial license fee in an amount that, subject to Subsection 4323 26-61a-109(5), the department sets in accordance with Section 63J-1-504; 4324 (b) notify the Department of Public Safety of the license approval and the names of 4325 each individual described in Subsection (2)(b)(ii); and 4326 (c) charge the licensee a fee in an amount that, subject to Subsection 26-61a-109(5). 4327 the department sets in accordance with Section 63J-1-504, for any change in location, 4328 ownership, or company structure. (4) The department may not issue a license to operate a medical cannabis pharmacy 4329 4330 to an applicant if an individual described in Subsection (2)(b)(ii): 4331 (a) has been convicted under state or federal law of: 4332 (i) a felony; or 4333 (ii) after December 3, 2018, a misdemeanor for drug distribution; 4334 (b) is younger than 21 years old; or (c) after September 23, 2019, until January 1, 2023, is actively serving as a legislator. 4335 4336 (5) (a) If an applicant for a medical cannabis pharmacy license under this section holds a license under Title 4, Chapter 41, Hemp and Cannabinoid Act, the department may 4337 4338 not give preference to the applicant based on the applicant's status as a holder of the 4339 license. 4340 (b) If an applicant for a medical cannabis pharmacy license under this section holds a 4341 license to operate a cannabis cultivation facility under Title 4, Chapter 41a, Cannabis 4342 Production Establishments, the department: 4343 (i) shall consult with the Department of Agriculture and Food regarding the applicant; 4344 and 4345 (ii) may give consideration to the applicant based on the applicant's status as a holder of a license to operate a cannabis cultivation facility if: 4346
- 4347 (A) the applicant demonstrates that a decrease in costs to patients is more likely to 4348 result from the applicant's vertical integration than from a more competitive marketplace; and
- 4349 (B) the department finds multiple other factors, in addition to the existing license, that support granting the new license.

- (6) (a) The department may revoke a license under this part: 4351
- 4352 (i) if the medical cannabis pharmacy does not begin operations within one year after the day on which the department issues an announcement of the department's intent to 4353 4354 award a license to the medical cannabis pharmacy:
 - (ii) after the third the same violation of this chapter in any of the licensee's licensed cannabis production establishments or medical cannabis pharmacies;
 - (iii) if an individual described in Subsection (2)(b)(ii) is convicted, while the license is active, under state or federal law of:
 - (A) a felony; or

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- (B) after December 3, 2018, a misdemeanor for drug distribution;
- (iv) if the licensee fails to provide the information described in Subsection (2)(b)(vi) at the time of application, or fails to supplement the information described in Subsection (2)(b)(vi) with any investigation or adverse action that occurs after the submission of the application within 14 calendar days after the licensee receives notice of the investigation or adverse action;
- (v) if the medical cannabis pharmacy demonstrates a willful or reckless disregard for the requirements of this chapter or the rules the department makes in accordance with this chapter; or
- (vi) if, after a change of ownership described in Subsection (11)(c), the department determines that the medical cannabis pharmacy no longer meets the minimum standards for licensure and operation of the medical cannabis pharmacy described in this chapter.
- (b) The department shall rescind a notice of an intent to issue a license under this part to an applicant or revoke a license issued under this part if the associated medical cannabis pharmacy does not begin operation on or before June 1, 2021.
- (7) (a) A person who receives a medical cannabis pharmacy license under this chapter, if the municipality or county where the licensed medical cannabis pharmacy will be located requires a local land use permit, shall submit to the department a copy of the licensee's approved application for the land use permit within 120 days after the day on which the department issues the license.
- (b) If a licensee fails to submit to the department a copy the licensee's approved land 4380 use permit application in accordance with Subsection (7)(a), the department may revoke the 4381 4382 licensee's license.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING DRAFT FOR DISCUSSION FURFUSES ONLY
4383	(8) The department shall deposit the proceeds of a fee imposed by this section into
4384	the Qualified Patient Enterprise Fund.
4385	(9) The department shall begin accepting applications under this part on or before
4386	March 1, 2020.
4387	(10) (a) The department's authority to issue a license under this section is plenary
4388	and is not subject to review.
4389	(b) Notwithstanding Subsection (2), the decision of the department to award a license
4390	to an applicant is not subject to:
4391	(i) Title 63G, Chapter 6a, Part 16, Protests; or
4392	(ii) Title 63G, Chapter 6a, Part 17, Procurement Appeals Board.
4393	(11) (a) A medical cannabis pharmacy license is not transferrable or assignable.
4394	(b) A medical cannabis pharmacy shall report in writing to the department no later
4395	than 10 business days before the date of any change of ownership of the medical cannabis
4396	pharmacy.
4397	(c) If the ownership of a medical cannabis pharmacy changes by 50% or more:
4398	(i) concurrent with the report described in Subsection (11)(b), the medical cannabis
4399	pharmacy shall submit a new application described in Subsection (2)(b), subject to
4400	Subsection (2)(c);
4401	(ii) within 30 days of the submission of the application, the department shall:
4402	(A) conduct an application review; and
4403	(B) award a license to the medical cannabis pharmacy for the remainder of the term
4404	of the medical cannabis pharmacy's license before the ownership change if the medical
4405	cannabis pharmacy meets the minimum standards for licensure and operation of the medical
4406	cannabis pharmacy described in this chapter; and
4407	(iii) if the department approves the license application, notwithstanding Subsection
4408	(3), the medical cannabis pharmacy shall pay a license fee that the department sets in
4409	accordance with Section 63J-1-504 in an amount that covers the board's cost of conducting
4410	the application review.
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4412	[26-61a-302.] <u>26B-4-225.</u> Medical cannabis pharmacy owners and directors
4413	Criminal background checks.

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(1) Each applicant to whom the department issues a notice of intent to award a

license to operate as a medical cannabis pharmacy shall submit, before the department may award the license, from each individual who has a financial or voting interest of 2% or greater in the applicant or who has the power to direct or cause the management or control of the applicant:

- (a) a fingerprint card in a form acceptable to the Department of Public Safety;
- (b) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the individual's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service; and
 - (c) consent to a fingerprint background check by:
 - (i) the Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.

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- (2) The Bureau of Criminal Identification shall:
- 4427 (a) check the fingerprints the applicant submits under Subsection (1) against the 4428 applicable state, regional, and national criminal records databases, including the Federal 4429 Bureau of Investigation Next Generation Identification System;
 - (b) report the results of the background check to the department;
- (c) maintain a separate file of fingerprints that applicants submit under Subsection (1) for search by future submissions to the local and regional criminal records databases, including latent prints;
 - (d) request that the fingerprints be retained in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and latent prints; and
 - (e) establish a privacy risk mitigation strategy to ensure that the department only receives notifications for an individual with whom the department maintains an authorizing relationship.
 - (3) The department shall:
 - (a) assess an individual who submits fingerprints under Subsection (1) a fee in an amount that the department sets in accordance with Section 63J-1-504 for the services that the Bureau of Criminal Identification or another authorized agency provides under this section; and
 - (b) remit the fee described in Subsection (3)(a) to the Bureau of Criminal

4447	Identification.
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4449	[26-61a-303.] <u>26B-4-226.</u> Renewal.
4450	(1) The department shall renew a license under this part every year if, at the time of
4451	renewal:
4452	(a) the licensee meets the requirements of Section 26-61a-301;
4453	(b) the licensee pays the department a license renewal fee in an amount that, subject
4454	to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504;
4455	and
4456	(c) if the medical cannabis pharmacy changes the operating plan described in Section
4457	26-61a-304 that the department approved under Subsection 26-61a-301(2)(b)(iv), the
4458	department approves the new operating plan.
4459	(2) (a) If a licensed medical cannabis pharmacy abandons the medical cannabis
4460	pharmacy's license, the department shall publish notice of an available license:
4461	(i) in a newspaper of general circulation for the geographic area in which the medical
4462	cannabis pharmacy license is available; or
4463	(ii) on the Utah Public Notice Website established in Section 63A-16-601.
4464	(b) The department may establish criteria, in collaboration with the Division of
4465	Professional Licensing and the Board of Pharmacy and in accordance with Title 63G,
4466	Chapter 3, Utah Administrative Rulemaking Act, to identify the medical cannabis pharmacy
4467	actions that constitute abandonment of a medical cannabis pharmacy license.
4468	(3) If the department has not completed the necessary processes to make a
4469	determination on a license renewal under Subsections (1)(a) and (c) before the expiration of
4470	a license, the department may issue a conditional medical cannabis pharmacy license to a
4471	licensed medical cannabis pharmacy that has applied for license renewal under this section
4472	and paid the fee described in Subsection (1)(b).
4473	
4474	[26-61a-304.] <u>26B-4-227.</u> Operating plan.
4475	A person applying for a medical cannabis pharmacy license shall submit to the
4476	department a proposed operation plan for the medical cannabis pharmacy that complies with
4477	this section and that includes:
4478	(1) a description of the physical characteristics of the proposed facility, including a

4479	floor plan and an architectural elevation;
4480	(2) a description of the credentials and experience of:
4481	(a) each officer, director, or owner of the proposed medical cannabis pharmacy; and
4482	(b) any highly skilled or experienced prospective employee;
4483	(3) the medical cannabis pharmacy's employee training standards;
4484	(4) a security plan;
4485	(5) a description of the medical cannabis pharmacy's inventory control system,
4486	including a plan to make the inventory control system compatible with the state electronic
4487	verification system;
4488	(6) storage protocols, both short- and long-term, to ensure that cannabis is stored in a
4489	manner that is sanitary and preserves the integrity of the cannabis; and
4490	(7) a description of the proposed medical cannabis pharmacy's strategic plan for
4491	opening the medical cannabis pharmacy, including gauging appropriate timing based on:
4492	(a) the supply of medical cannabis and medical cannabis products, in consultation
4493	with the Department of Agriculture and Food; and
4494	(b) the quantity and condition of the population of medical cannabis cardholders, in
4495	consultation with the department.
4496	
4497	[26-61a-305.] <u>26B-4-228.</u> Maximum number of licenses Home delivery
4498	medical cannabis pharmacies.
4499	(1) (a) Except as provided in Subsections (1)(b) or (d), if a sufficient number of
4500	applicants apply, the department shall issue up to 15 medical cannabis pharmacy licenses in
4501	accordance with this section.
4502	(b) If an insufficient number of qualified applicants apply for the available number of
4503	medical cannabis pharmacy licenses, the department shall issue a medical cannabis
4504	pharmacy license to each qualified applicant.
4505	(c) The department may issue the licenses described in Subsection (1)(a) in
4506	accordance with this Subsection (1)(c).
4507	(i) Using one procurement process, the department may issue eight licenses to an

cannabis pharmacies.

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initial group of medical cannabis pharmacies and six licenses to a second group of medical

4511 (1)(c)(i), the department shall:

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- (A) divide the state into no less than four geographic regions;
- 4513 (B) issue at least one license in each geographic region during each phase of issuing 4514 licenses; and
- 4515 (C) complete the process of issuing medical cannabis pharmacy licenses no later 4516 than July 1, 2020.
- 4517 (iii) In issuing a 15th license under Subsection (1), the department shall ensure that
 4518 the license recipient will locate the medical cannabis pharmacy within Dagget, Duchesne,
 4519 Uintah, Carbon, Sevier, Emery, Grand, or San Juan County.
 - (d) (i) The department may issue licenses to operate a medical cannabis pharmacy in addition to the licenses described in Subsection (1)(a) if the department determines, in consultation with the Department of Agriculture and Food and after an annual or more frequent analysis of the current and anticipated market for medical cannabis, that each additional license is necessary to provide an adequate supply, quality, or variety of medical cannabis to medical cannabis cardholders.
 - (ii) The department shall:
- (A) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish criteria and processes for the consultation, analysis, and application for a license described in Subsection (1)(d)(i); and
 - (B) report to the Executive Appropriations Committee of the Legislature before each time the department issues an additional license under Subsection (1)(d)(i) regarding the results of the consultation and analysis described in Subsection (1)(d)(i) and the application of the criteria described in Subsection (1)(d)(ii)(A).
 - (2) (a) If there are more qualified applicants than there are available licenses for medical cannabis pharmacies, the department shall:
 - (i) evaluate each applicant and award the license to the applicant that best demonstrates:
- 4538 (A) experience with establishing and successfully operating a business that involves 4539 complying with a regulatory environment, tracking inventory, and training, evaluating, and 4540 monitoring employees;
- (B) an operating plan that will best ensure the safety and security of patrons and the community;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	Working Brown 1 or Broodsoler 1 or occording
4543	(C) positive connections to the local community;
4544	(D) the suitability of the proposed location and the location's accessibility for qualifying
4545	patients;
4546	(E) the extent to which the applicant can increase efficiency and reduce the cost of
4547	medical cannabis for patients; and
4548	(F) a strategic plan described in Subsection 26-61a-304(7) that has a comparatively
4549	high likelihood of success; and
4550	(ii) ensure a geographic dispersal among licensees that is sufficient to reasonably
4551	maximize access to the largest number of medical cannabis cardholders.
4552	(b) In making the evaluation described in Subsection (2)(a), the department may give
4553	increased consideration to applicants who indicate a willingness to:
4554	(i) operate as a home delivery medical cannabis pharmacy that accepts electronic
4555	medical cannabis orders that the state central patient portal facilitates; and
4556	(ii) accept payments through:
4557	(A) a payment provider that the Division of Finance approves, in consultation with the
4558	state treasurer, in accordance with Section 26-61a-603; or
4559	(B) a financial institution in accordance with Subsection 26-61a-603(4).
4560	(3) The department may conduct a face-to-face interview with an applicant for a
4561	license that the department evaluates under Subsection (2).
4562	(4) (a) The department may designate a medical cannabis pharmacy as a home
4563	delivery medical cannabis pharmacy if the department determines that the medical cannabis
4564	pharmacy's operating plan demonstrates the functional and technical ability to:
4565	(i) safely conduct transactions for medical cannabis shipments;
4566	(ii) accept electronic medical cannabis orders that the state central patient portal
4567	facilitates; and
4568	(iii) accept payments through:
4569	(A) a payment provider that the Division of Finance approves, in consultation with the
4570	state treasurer, in accordance with Section 26-61a-603; or
4571	(B) a financial institution in accordance with Subsection 26-61a-603(4).

(b) An applicant seeking a designation as a home delivery medical cannabis

pharmacy shall identify in the applicant's operating plan any information relevant to the

department's evaluation described in Subsection (4)(a), including:

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4575	(i) the name and contact information of the payment provider;
4576	(ii) the nature of the relationship between the prospective licensee and the payment
4577	provider;
4578	(iii) the processes of the following to safely and reliably conduct transactions for
4579	medical cannabis shipments:
4580	(A) the prospective licensee; and
4581	(B) the electronic payment provider or the financial institution described in Subsection
4582	(4)(a)(iii); and
4583	(iv) the ability of the licensee to comply with the department's rules regarding the
4584	secure transportation and delivery of medical cannabis or medical cannabis product to a
4585	medical cannabis cardholder.
4586	(c) Notwithstanding any county or municipal ordinance, a medical cannabis pharmacy
4587	that the department designates as a home delivery medical cannabis pharmacy may deliver
4588	medical cannabis shipments in accordance with this chapter.
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4590	[26-61a-501.] <u>26B-4-229.</u> Operating requirements General.
4591	(1) (a) A medical cannabis pharmacy shall operate:
4592	(i) at the physical address provided to the department under Section 26-61a-301; and
4593	(ii) in accordance with the operating plan provided to the department under Section
4594	26-61a-301 and, if applicable, Section 26-61a-304.
4595	(b) A medical cannabis pharmacy shall notify the department before a change in the
4596	medical cannabis pharmacy's physical address or operating plan.
4597	(2) An individual may not enter a medical cannabis pharmacy unless the individual:
4598	(a) is at least 18 years old or is an emancipated minor under Section 80-7-105; and
4599	(b) except as provided in Subsection (4):
4600	(i) possesses a valid:
4601	(A) medical cannabis pharmacy agent registration card;
4602	(B) pharmacy medical provider registration card; or
4603	(C) medical cannabis card;
4604	(ii) is an employee of the department or the Department of Agriculture and Food
4605	performing an inspection under Section 26-61a-504; or
4606	(iii) is another individual as the department provides.

- (3) A medical cannabis pharmacy may not employ an individual who is younger than 4607 21 years old. 4608
- (4) Notwithstanding Subsection (2)(a), a medical cannabis pharmacy may authorize 4609 4610 an individual who is not a medical cannabis pharmacy agent or pharmacy medical provider to 4611 access the medical cannabis pharmacy if the medical cannabis pharmacy tracks and monitors the individual at all times while the individual is at the medical cannabis pharmacy 4612 4613 and maintains a record of the individual's access.
 - (5) A medical cannabis pharmacy shall operate in a facility that has:
- 4615 (a) a single, secure public entrance;

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- (b) a security system with a backup power source that:
- (i) detects and records entry into the medical cannabis pharmacy; and
- 4618 (ii) provides notice of an unauthorized entry to law enforcement when the medical cannabis pharmacy is closed; and 4619
- 4620 (c) a lock on each area where the medical cannabis pharmacy stores cannabis or a 4621 cannabis product.
 - (6) A medical cannabis pharmacy shall post, both clearly and conspicuously in the medical cannabis pharmacy, the limit on the purchase of cannabis described in Subsection 26-61a-502(2).
 - (7) Except for an emergency situation described in Subsection 26-61a-201(3)(c), a medical cannabis pharmacy may not allow any individual to consume cannabis on the property or premises of the medical cannabis pharmacy.
 - (8) A medical cannabis pharmacy may not sell cannabis or a cannabis product without first indicating on the cannabis or cannabis product label the name of the medical cannabis pharmacy.
 - (9) (a) Each medical cannabis pharmacy shall retain in the pharmacy's records the following information regarding each recommendation underlying a transaction:
 - (i) the recommending medical provider's name, address, and telephone number;
 - (ii) the patient's name and address;
 - (iii) the date of issuance;
 - (iv) directions of use and dosing guidelines or an indication that the recommending medical provider did not recommend specific directions of use or dosing guidelines; and
 - (v) if the patient did not complete the transaction, the name of the medical cannabis

4639	cardholder who completed the transaction.
4640	(b) (i) Except as provided in Subsection (9)(b)(iii), a medical cannabis pharmacy may
4641	not sell medical cannabis unless the medical cannabis has a label securely affixed to the
4642	container indicating the following minimum information:
4643	(A) the name, address, and telephone number of the medical cannabis pharmacy;
4644	(B) the unique identification number that the medical cannabis pharmacy assigns;
4645	(C) the date of the sale;
4646	(D) the name of the patient;
4647	(E) the name of the recommending medical provider who recommended the medical
4648	cannabis treatment;
4649	(F) directions for use and cautionary statements, if any;
4650	(G) the amount dispensed and the cannabinoid content;
4651	(H) the suggested use date;
4652	(I) for unprocessed cannabis flower, the legal use termination date; and
4653	(J) any other requirements that the department determines, in consultation with the
4654	Division of Professional Licensing and the Board of Pharmacy.
4655	(ii) A medical cannabis pharmacy is exempt from the requirement to provide the
4656	following information under Subsection (9)(b)(i) if the information is already provided on the
4657	product label that a cannabis production establishment affixes:
4658	(A) a unique identification number;
4659	(B) directions for use and cautionary statements;
4660	(C) amount and cannabinoid content; and
4661	(D) a suggested use date.
4662	(iii) If the size of a medical cannabis container does not allow sufficient space to
4663	include the labeling requirements described in Subsection (9)(b)(i), the medical cannabis
4664	pharmacy may provide the following information described in Subsection (9)(b)(i) on a
4665	supplemental label attached to the container or an informational enclosure that accompanies
4666	the container:
4667	(A) the cannabinoid content;
4668	(B) the suggested use date; and

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(iv) A medical cannabis pharmacy may sell medical cannabis to another medical

(C) any other requirements that the department determines.

4671 cannabis pharmacy without a label described in Subsection (9)(b)(i).

- (10) A pharmacy medical provider or medical cannabis pharmacy agent shall:
- (a) upon receipt of an order from a limited medical provider in accordance with Subsections 26-61a-106(1)(b) through (d):
- (i) for a written order or an electronic order under circumstances that the department determines, contact the limited medical provider or the limited medical provider's office to verify the validity of the recommendation; and
- (ii) for an order that the pharmacy medical provider or medical cannabis pharmacy agent verifies under Subsection (10)(a)(i) or an electronic order that is not subject to verification under Subsection (10)(a)(i), enter the limited medical provider's recommendation or renewal, including any associated directions of use, dosing guidelines, or caregiver indication, in the state electronic verification system;
- (b) in processing an order for a holder of a conditional medical cannabis card described in Subsection 26-61a-201(1)(b) that appears irregular or suspicious in the judgment of the pharmacy medical provider or medical cannabis pharmacy agent, contact the recommending medical provider or the recommending medical provider's office to verify the validity of the recommendation before processing the cardholder's order;
- (c) unless the medical cannabis cardholder has had a consultation under Subsection 26-61a-502(4) or (5), verbally offer to a medical cannabis cardholder at the time of a purchase of cannabis, a cannabis product, or a medical cannabis device, personal counseling with the pharmacy medical provider; and
- (d) provide a telephone number or website by which the cardholder may contact a pharmacy medical provider for counseling.
- (11) (a) A medical cannabis pharmacy may create a medical cannabis disposal program that allows an individual to deposit unused or excess medical cannabis, cannabis residue from a medical cannabis device, or medical cannabis product in a locked box or other secure receptacle within the medical cannabis pharmacy.
- (b) A medical cannabis pharmacy with a disposal program described in Subsection(11)(a) shall ensure that only a medical cannabis pharmacy agent or pharmacy medical provider can access deposited medical cannabis or medical cannabis products.
- (c) A medical cannabis pharmacy shall dispose of any deposited medical cannabis or medical cannabis products by:

- 4703 (i) rendering the deposited medical cannabis or medical cannabis products unusable 4704 and unrecognizable before transporting deposited medical cannabis or medical cannabis products from the medical cannabis pharmacy; and 4705 4706 (ii) disposing of the deposited medical cannabis or medical cannabis products in accordance with: 4707 (A) federal and state law, rules, and regulations related to hazardous waste: 4708 4709 (B) the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.; 4710 (C) Title 19, Chapter 6, Part 5, Solid Waste Management Act; and 4711 (D) other regulations that the department makes in accordance with Title 63G, 4712 Chapter 3, Utah Administrative Rulemaking Act. 4713 (12) The department shall establish by rule, in accordance with Title 63G, Chapter 3, 4714 Utah Administrative Rulemaking Act, protocols for a recall of cannabis and cannabis 4715 products by a medical cannabis pharmacy. 4716 [26-61a-502.] 26B-4-230. Dispensing -- Amount a medical cannabis pharmacy 4717 4718 may dispense -- Reporting -- Form of cannabis or cannabis product. 4719 (1) (a) A medical cannabis pharmacy may not sell a product other than, subject to this 4720 chapter: 4721 (i) cannabis in a medicinal dosage form that the medical cannabis pharmacy acquired 4722 from another medical cannabis pharmacy or a cannabis processing facility that is licensed 4723 under Section 4-41a-201: 4724 (ii) a cannabis product in a medicinal dosage form that the medical cannabis 4725 pharmacy acquired from another medical cannabis pharmacy or a cannabis processing facility that is licensed under Section 4-41a-201; 4726 4727 (iii) a medical cannabis device; or (iv) educational material related to the medical use of cannabis. 4728 4729 (b) A medical cannabis pharmacy may only sell an item listed in Subsection (1)(a) to 4730 an individual with:
- 4731 (i) (A) a medical cannabis card;

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- (B) a department registration described in Section 26-61a-201(10); and
- 4733 (ii) a corresponding valid form of photo identification.
 - (c) Notwithstanding Subsection (1)(a), a medical cannabis pharmacy may not sell a

cannabis-based drug that the United States Food and Drug Administration has approved.

- 4736 (d) Notwithstanding Subsection (1)(b), a medical cannabis pharmacy may not sell a
 4737 medical cannabis device to an individual described in Subsection 26-61a-201(2)(a)(i)(B) or to
 4738 a minor described in Subsection 26-61a-201(2)(c) unless the individual or minor has the
 4739 approval of the Compassionate Use Board in accordance with Subsection 26-61a-105(5).
 - (2) A medical cannabis pharmacy:
- 4741 (a) may dispense to a medical cannabis cardholder, in any one 28-day period, up to 4742 the legal dosage limit of:
 - (i) unprocessed cannabis that:
 - (A) is in a medicinal dosage form; and
- 4745 (B) carries a label clearly displaying the amount of tetrahydrocannabinol and 4746 cannabidiol in the cannabis: and
 - (ii) a cannabis product that is in a medicinal dosage form; and
 - (b) may not dispense:

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- 4749 (i) more medical cannabis than described in Subsection (2)(a); or
- 4750 (ii) to an individual whose recommending medical provider did not recommend 4751 directions of use and dosing guidelines, until the individual consults with the pharmacy 4752 medical provider in accordance with Subsection (4), any medical cannabis.
- 4753 (3) An individual with a medical cannabis card:
 - (a) may purchase, in any one 28-day period, up to the legal dosage limit of:
 - (i) unprocessed cannabis in a medicinal dosage form; and
- 4756 (ii) a cannabis product in a medicinal dosage form;
- 4757 (b) may not purchase:
- 4758 (i) more medical cannabis than described in Subsection (3)(a); or
- 4759 (ii) if the relevant recommending medical provider did not recommend directions of 4760 use and dosing guidelines, until the individual consults with the pharmacy medical provider in 4761 accordance with Subsection (4), any medical cannabis; and
 - (c) may not use a route of administration that the relevant recommending medical provider or the pharmacy medical provider, in accordance with Subsection (4) or (5), has not recommended.
- 4765 (4) If a recommending medical provider recommends treatment with medical cannabis but wishes for the pharmacy medical provider to determine directions of use and

dosing guidelines: 4767

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- 4768 (a) the recommending medical provider shall provide to the pharmacy medical provider, either through the state electronic verification system or through a medical cannabis 4769 4770 pharmacy's recording of a recommendation under the order of a limited medical provider, any 4771 of the following information that the recommending medical provider feels would be needed 4772 to provide appropriate directions of use and dosing guidelines:
 - (i) information regarding the qualifying condition underlying the recommendation;
 - (ii) information regarding prior treatment attempts with medical cannabis; and
 - (iii) portions of the patient's current medication list; and
- 4776 (b) before the relevant medical cannabis cardholder may obtain medical cannabis, the pharmacy medical provider shall: 4777
 - (i) review pertinent medical records, including the recommending medical provider documentation described in Subsection (4)(a); and
 - (ii) unless the pertinent medical records show directions of use and dosing guidelines from a state central patient portal medical provider in accordance with Subsection (5), after completing the review described in Subsection (4)(b)(i) and consulting with the recommending medical provider as needed, determine the best course of treatment through consultation with the cardholder regarding:
 - (A) the patient's qualifying condition underlying the recommendation from the recommending medical provider;
 - (B) indications for available treatments;
 - (C) directions of use and dosing guidelines; and
- 4789 (D) potential adverse reactions.
 - (5) (a) A state central patient portal medical provider may provide the consultation and make the determination described in Subsection (4)(b) for a medical cannabis patient cardholder regarding an electronic order that the state central patient portal facilitates.
 - (b) The state central patient portal medical provider described in Subsection (5)(a) shall document the directions of use and dosing guidelines, determined under Subsection (5)(a) in the pertinent medical records.
 - (6) (a) A medical cannabis pharmacy shall:
- 4797 (i) (A) access the state electronic verification system before dispensing cannabis or a cannabis product to a medical cannabis cardholder in order to determine if the cardholder or, 4798

where applicable, the associated patient has met the maximum amount of medical cannabis described in Subsection (2); and

- (B) if the verification in Subsection (6)(a)(i) indicates that the individual has met the maximum amount described in Subsection (2), decline the sale, and notify the recommending medical provider who made the underlying recommendation;
- (ii) submit a record to the state electronic verification system each time the medical cannabis pharmacy dispenses medical cannabis to a medical cannabis cardholder;
- (iii) ensure that the pharmacy medical provider who is a licensed pharmacist reviews each medical cannabis transaction before dispensing the medical cannabis to the cardholder in accordance with pharmacy practice standards;
 - (iv) package any medical cannabis that is in a container that:
- 4810 (A) complies with Subsection 4-41a-602(1)(b) or, if applicable, provisions related to a
 4811 container for unprocessed cannabis flower in the definition of "medicinal dosage form" in
 4812 Section 26-61a-102;
 - (B) is tamper-resistant and tamper-evident; and
 - (C) provides an opaque bag or box for the medical cannabis cardholder's use in transporting the container in public; and
 - (v) for a product that is a cube that is designed for ingestion through chewing or holding in the mouth for slow dissolution, include a separate, off-label warning about the risks of over-consumption.
 - (b) A medical cannabis cardholder transporting or possessing the container described in Subsection (6)(a)(iv) in public shall keep the container within the opaque bag or box that the medical cannabis pharmacist provides.
 - (7) (a) Except as provided in Subsection (7)(b), a medical cannabis pharmacy may not sell medical cannabis in the form of a cigarette or a medical cannabis device that is intentionally designed or constructed to resemble a cigarette.
 - (b) A medical cannabis pharmacy may sell a medical cannabis device that warms cannabis material into a vapor without the use of a flame and that delivers cannabis to an individual's respiratory system.
 - (8) (a) A medical cannabis pharmacy may not give, at no cost, a product that the medical cannabis pharmacy is allowed to sell under Subsection (1)(a)(i), (ii), or (iii).
 - (b) A medical cannabis pharmacy may give, at no cost, educational material related to

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4831	the medical use of cannabis.	

- (9) The department may impose a uniform fee on each medical cannabis transaction in a medical cannabis pharmacy in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.
 - (10) A medical cannabis pharmacy may purchase and store medical cannabis devices regardless of whether the seller has a cannabis-related license under this title or Title 4, Chapter 41a, Cannabis Production Establishments.

[26-61a-503.] <u>26B-4-231.</u> Partial filling.

- (1) As used in this section, "partially fill" means to provide less than the full amount of cannabis or cannabis product that the recommending medical provider recommends, if the recommending medical provider recommended specific dosing parameters.
- (2) A pharmacy medical provider may partially fill a recommendation for a medical cannabis treatment at the request of the recommending medical provider who issued the medical cannabis treatment recommendation or the medical cannabis cardholder.
- (3) The department shall make rules, in collaboration with the Division of Professional Licensing and the Board of Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying how to record the date, quantity supplied, and quantity remaining of a partially filled medical cannabis treatment recommendation.
- (4) A pharmacy medical provider who is a pharmacist may, upon the request of a medical cannabis cardholder, determine different dosing parameters, subject to the dosing limits in Subsection 26-61a-502(2), to fill the quantity remaining of a partially filled medical cannabis treatment recommendation if:
- (a) the pharmacy medical provider determined dosing parameters for the partial fill under Subsection 26-61a-502(4) or (5); and
 - (b) the medical cannabis cardholder reports that:
- (i) the partial fill did not substantially affect the qualifying condition underlying the medical cannabis recommendation; or
- (ii) the patient experienced an adverse reaction to the partial fill or was otherwise unable to successfully use the partial fill.

[26-61a-504.] <u>26B-4-232.</u> Inspections.

- 4863 (1) Each medical cannabis pharmacy shall maintain the pharmacy's medical cannabis 4864 treatment recommendation files and other records in accordance with this chapter, 4865 department rules, and the federal Health Insurance Portability and Accountability Act of 4866 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.
- 4867 (2) The department or the Department of Agriculture and Food may inspect the
 4868 records, facility, and inventory of a medical cannabis pharmacy at any time during business
 4869 hours in order to determine if the medical cannabis pharmacy complies with this chapter and
 4870 Title 4, Chapter 41a, Cannabis Production Establishments.
 - (3) An inspection under this section may include:
- 4872 (a) inspection of a site, facility, vehicle, book, record, paper, document, data, or other physical or electronic information, or any combination of the above;
 - (b) questioning of any relevant individual;

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- 4875 (c) inspection of equipment, an instrument, a tool, or machinery, including a container 4876 or label;
 - (d) random sampling of medical cannabis by the Department of Agriculture and Food in accordance with rules described in Section 4-41a-701; or
 - (e) seizure of medical cannabis, medical cannabis devices, or educational material as evidence in a department investigation or inspection or in instances of compliance failure.
 - (4) In making an inspection under this section, the department or the Department of Agriculture and Food may freely access any area and review and make copies of a book, record, paper, document, data, or other physical or electronic information, including financial data, sales data, shipping data, pricing data, and employee data.
 - (5) Failure to provide the department, the Department of Agriculture and Food, or the authorized agents of the department or the Department of Agriculture and Food immediate access to records and facilities during business hours in accordance with this section may result in:
 - (a) the imposition of a civil monetary penalty that the department sets in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (b) license or registration suspension or revocation; or
 - (c) an immediate cessation of operations under a cease and desist order that the department issues.
 - (6) Notwithstanding any other provision of law, the department may temporarily store

4895	in any department facility the items the department seizes under Subsection (3)(e) until the
4896	department:
4897	(a) determines that sufficient compliance justifies the return of the seized items; or
4898	(b) disposes of the items in the same manner as a cannabis production establishment
4899	in accordance with Section 4-41a-405.
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4901	[26-61a-505.] <u>26B-4-233.</u> Advertising.
4902	(1) Except as provided in this section, a person may not advertise in any medium
4903	regarding a medical cannabis pharmacy or the dispensing of medical cannabis within the
4904	state.
4905	(2) Subject to Section 26-61a-116, a medical cannabis pharmacy may:
4906	(a) advertise an employment opportunity at the medical cannabis pharmacy;
4907	(b) notwithstanding any municipal or county ordinance prohibiting signage, use
4908	signage on the outside of the medical cannabis pharmacy that:
4909	(i) includes only:
4910	(A) in accordance with Subsection 26-61a-116(4), the medical cannabis pharmacy's
4911	name, logo, and hours of operation; and
4912	(B) a green cross; and
4913	(ii) complies with local ordinances regulating signage;
4914	(c) advertise in any medium:
4915	(i) the pharmacy's name and logo;
4916	(ii) the location and hours of operation of the medical cannabis pharmacy;
4917	(iii) a service available at the medical cannabis pharmacy;
4918	(iv) personnel affiliated with the medical cannabis pharmacy;
4919	(v) whether the medical cannabis pharmacy is licensed as a home delivery medical
4920	cannabis pharmacy;
4921	(vi) best practices that the medical cannabis pharmacy upholds; and
4922	(vii) educational material related to the medical use of cannabis, as defined by the
4923	department;
4924	(d) hold an educational event for the public or medical providers in accordance with
4925	Subsection (3) and the rules described in Subsection (4); and
4926	(e) maintain on the medical cannabis pharmacy's website non-promotional

- information regarding the medical cannabis pharmacy's inventory. 4927 4928 (3) A medical cannabis pharmacy may not include in an educational event described in Subsection (2)(d): 4929 4930 (a) any topic that conflicts with this chapter or Title 4, Chapter 41a, Cannabis 4931 Production Establishments: 4932 (b) any gift items or merchandise other than educational materials, as those terms are 4933 defined by the department; 4934 (c) any marketing for a specific product from the medical cannabis pharmacy or any 4935 other statement, claim, or information that would violate the federal Food, Drug, and 4936 Cosmetic Act, 21 U.S.C. Sec. 301, et seq.; or 4937 (d) a presenter other than the following: (i) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act: 4938 (ii) an advanced practice registered nurse licensed under Title 58, Chapter 31b, 4939 4940 Nurse Practice Act: (iii) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or 4941 4942 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; 4943 (iv) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician 4944 Assistant Act: (v) a medical practitioner, similar to the practitioners described in this Subsection 4945 4946 (3)(d)(v), who is licensed in another state or country; 4947 (vi) a state employee; or 4948 (vii) if the presentation relates to a cannabis topic other than medical treatment or 4949 medical conditions, an individual whom the department approves based on the individual's 4950 background and credentials in the presented topic. 4951 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah 4952 Administrative Rulemaking Act, to define: 4953 (a) the educational material described in Subsection (2)(c)(vii); and 4954 (b) the elements of and restrictions on the educational event described in Subsection 4955 (3), including: (i) a minimum age of 21 years old for attendees; and 4956
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(ii) an exception to the minimum age for a medical cannabis patient cardholder who is

at least 18 years old.

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4959	[26-61a-506.] <u>26B-4-234.</u> Medical cannabis transportation.
4960	(1) Only the following individuals may transport medical cannabis under this chapter:
4961	(a) a registered medical cannabis pharmacy agent;
4962	(b) a registered medical cannabis courier agent;
4963	(c) a registered pharmacy medical provider; or
4964	(d) a medical cannabis cardholder who is transporting a medical cannabis treatment
4965	that the cardholder is authorized to transport.
4966	(2) Except for an individual with a valid medical cannabis card under this chapter who
4967	is transporting a medical cannabis treatment that the cardholder is authorized to transport, an
4968	individual described in Subsection (1) shall possess a transportation manifest that:
4969	(a) includes a unique identifier that links the cannabis or cannabis product to a
4970	relevant inventory control system;
4971	(b) includes origin and destination information for the medical cannabis that the
4972	individual is transporting; and
4973	(c) identifies the departure and arrival times and locations of the individual
4974	transporting the medical cannabis.
4975	(3) (a) In addition to the requirements in Subsections (1) and (2), the department may
4976	establish by rule, in collaboration with the Division of Professional Licensing and the Board of
4977	Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4978	requirements for transporting medical cannabis to ensure that the medical cannabis remains
4979	safe for human consumption.
4980	(b) The transportation described in Subsection (1)(a) is limited to transportation
4981	between a medical cannabis pharmacy and:
4982	(i) another medical cannabis pharmacy; or
4983	(ii) for a medical cannabis shipment, a medical cannabis cardholder's home address.
4984	(4) (a) It is unlawful for an individual described in Subsection (1) to make a transport
4985	described in this section with a manifest that does not meet the requirements of this section.
4986	(b) Except as provided in Subsection (4)(d), an individual who violates Subsection
4987	(4)(a) is:
4988	(i) guilty of an infraction; and
4989	(ii) subject to a \$100 fine.

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(c) An individual who is guilty of a violation described in Subsection (4)(b) is not guilty

- of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct underlying the violation described in Subsection (4)(b).

 (d) If the individual described in Subsection (4)(a) is transporting more medical
 - (i) this chapter does not apply; and
- 4996 (ii) the individual is subject to penalties under Title 58, Chapter 37, Utah Controlled 4997 Substances Act.

cannabis than the manifest identifies, except for a de minimis administrative error:

4998 (5) An individual other than an individual described in Subsection (1) may transport a 4999 medical cannabis device within the state if the transport does not also contain medical 5000 cannabis.

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[26-61a-507.] 26B-4-235. Local control.

- (1) The operation of a medical cannabis pharmacy:
- 5004 (a) shall be a permitted use:
- 5005 (i) in any zone, overlay, or district within the municipality or county except for a 5006 primarily residential zone; and
 - (ii) on land that the municipality or county has not zoned; and
- 5008 (b) is subject to the land use regulations, as defined in Sections 10-9a-103 and 17-27a-103, that apply in the underlying zone.
- 5010 (2) A municipality or county may not:
- 5011 (a) on the sole basis that the applicant or medical cannabis pharmacy violates federal law regarding the legal status of cannabis, deny or revoke:
- 5013 (i) a land use permit, as that term is defined in Sections 10-9a-103 and 17-27a-103, to operate a medical cannabis pharmacy; or
 - (ii) a business license to operate a medical cannabis pharmacy;
- 5016 (b) require a certain distance between a medical cannabis pharmacy and:
- 5017 (i) another medical cannabis pharmacy;
- 5018 (ii) a cannabis production establishment;
- 5019 (iii) a retail tobacco specialty business, as that term is defined in Section 26-62-103;

5020 or

- 5021 (iv) an outlet, as that term is defined in Section 32B-1-202; or
- 5022 (c) in accordance with Subsections 10-9a-509(1) and 17-27a-508(1), enforce a land

use regulation against a medical cannabis pharmacy that was not in effect on the day on which the medical cannabis pharmacy submitted a complete land use application.

- (3) (a) A municipality or county may enact an ordinance that:
- (i) is not in conflict with this chapter; and

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- 5027 (ii) governs the time, place, or manner of medical cannabis pharmacy operations in the municipality or county.
- 5029 (b) An ordinance that a municipality or county enacts under Subsection (3)(a) may not restrict the hours of operation from 7 a.m. to 10 p.m.
 - (4) An applicant for a land use permit to operate a medical cannabis pharmacy shall comply with the land use requirements and application process described in:
 - (a) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, including Section 10-9a-528; and
- 5035 (b) Title 17, Chapter 27a, County Land Use, Development, and Management Act, including Section 17-27a-525.

[26-61a-601.] <u>26B-4-236.</u> State central patient portal -- Department duties.

- (1) On or before July 1, 2020, the department shall establish or contract to establish, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, a state central patient portal as described in this section.
 - (2) The state central patient portal shall:
- (a) authenticate each user to ensure the user is a valid medical cannabis patient cardholder;
 - (b) allow a medical cannabis patient cardholder to:
 - (i) obtain and download the cardholder's medical cannabis card;
 - (ii) review the cardholder's medical cannabis purchase history; and
- (iii) manage the cardholder's personal information, including withdrawing consent for the use of the cardholder's information for a study described in Subsection 26-61a-201(12);
- (c) if the cardholder's recommending medical provider recommended the use of medical cannabis without providing directions of use and dosing guidelines and the cardholder has not yet received the counseling or consultation required in Subsection 26-61a-502(4):
 - (i) alert the cardholder of the outstanding need for consultation; and

- 5055 (ii) provide the cardholder with access to the contact information for each state central patient portal medical provider and each pharmacy medical provider;
- 5057 (d) except as provided in Subsection (2)(e), facilitate an electronic medical cannabis order:
- 5059 (i) to a home delivery medical cannabis pharmacy for a medical cannabis shipment; 5060 or
 - (ii) to a medical cannabis pharmacy for a medical cannabis cardholder to obtain in person from the pharmacy;
 - (e) prohibit a patient from completing an electronic medical cannabis order described in Subsection (2)(d) if the purchase would exceed the limitations described in Subsection 26-61a-502(2)(a) or (b);
 - (f) provide educational information to medical cannabis patient cardholders regarding the state's medical cannabis laws and regulatory programs and other relevant information regarding medical cannabis; and
 - (g) allow the patient to designate up to two caregivers who may receive a medical cannabis caregiver card to purchase and transport medical cannabis on behalf of the patient in accordance with this chapter.
 - (3) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the state central patient portal.

[26-61a-602.] <u>26B-4-237.</u> State central patient portal medical provider.

- (1) In relation to the state central patient portal:
- (a) the department may only employ, as a state central patient portal medical provider:
- 5079 (i) a pharmacist who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act; 5080 or
- 5081 (ii) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and
 - (b) if the department employs a state central patient portal medical provider, the department shall ensure that a state central patient portal medical provider is available during normal business hours.
 - (2) A state central patient portal medical provider may:

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5087	(a) provide consultations to medical cannabis cardholders and qualified medical
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(b) determine dosing parameters in accordance with Subsection 26-61a-502(5).

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[26-61a-603.] <u>26B-4-238.</u> Payment provider for electronic medical cannabis transactions.

- (1) A cannabis production establishment, a medical cannabis pharmacy, or a prospective home delivery medical cannabis pharmacy seeking to use a payment provider shall submit to the Division of Finance and the state treasurer information regarding the payment provider the prospective licensee will use to conduct financial transactions related to medical cannabis, including:
 - (a) the name and contact information of the payment provider;
- (b) the nature of the relationship between the establishment, pharmacy, or prospective pharmacy and the payment provider; and
- (c) for a prospective home delivery medical cannabis pharmacy, the processes the prospective licensee and the payment provider have in place to safely and reliably conduct financial transactions for medical cannabis shipments.
 - (2) The Division of Finance shall, in consultation with the state treasurer:
- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish standards for identifying payment providers that demonstrate the functional and technical ability to safely conduct financial transactions related to medical cannabis, including medical cannabis shipments;
- (b) review submissions the Division of Finance and the state treasurer receive under Subsection (1);
- 5111 (c) approve a payment provider that meets the standards described in Subsection 5112 (2)(a); and
 - (d) establish a list of approved payment providers.
 - (3) Any licensed cannabis production establishment, licensed medical cannabis pharmacy, or medical cannabis courier may use a payment provider that the Division of Finance approves, in consultation with the state treasurer, to conduct transactions related to the establishment's, pharmacy's, or courier's respective medical cannabis business.
 - (4) If Congress passes legislation that allows a cannabis-related business to facilitate

payments through or deposit funds in a financial institution, a cannabis production
establishment or a medical cannabis pharmacy may facilitate payments through or deposit
funds in a financial institution in addition to or instead of a payment provider that the Division
of Finance approves, in consultation with the state treasurer, under this section.

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[26-61a-604.] <u>26B-4-239.</u> Home delivery of medical cannabis shipments -- Medical cannabis couriers -- License.

- 5126 (1) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
 5127 Administrative Rulemaking Act, to ensure the safety, security, and efficiency of a home
 5128 delivery medical cannabis pharmacy's fulfillment of electronic medical cannabis orders that
 5129 the state central patient portal facilitates, including rules regarding the safe and controlled
 5130 delivery of medical cannabis shipments.
- 5131 (2) A person may not operate as a medical cannabis courier without a license that the department issues under this section.
- 5133 (3) (a) Subject to Subsections (5) and (6), the department shall issue a license to operate as a medical cannabis courier to an applicant who is eligible for a license under this section.
 - (b) An applicant is eligible for a license under this section if the applicant submits to the department:
 - (i) the name and address of an individual who:
 - (A) has a financial or voting interest of 2% or greater in the proposed medical cannabis pharmacy; or
 - (B) has the power to direct or cause the management or control of a proposed cannabis production establishment;
 - (ii) an operating plan that includes operating procedures to comply with the operating requirements for a medical cannabis courier described in this chapter; and
 - (iii) an application fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.
- 5147 (4) If the department determines that an applicant is eligible for a license under this section, the department shall:
- 5149 (a) charge the applicant an initial license fee in an amount that, subject to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504; and

- 5151 (b) notify the Department of Public Safety of the license approval and the names of each individual described in Subsection (3)(b)(ii).
- 5153 (5) The department may not issue a license to operate as a medical cannabis courier to an applicant if an individual described in Subsection (3)(b)(ii):
 - (a) has been convicted under state or federal law of:
- 5156 (i) a felony; or

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- 5157 (ii) after September 23, 2019, a misdemeanor for drug distribution; or
- 5158 (b) is younger than 21 years old.
- 5159 (6) The department may revoke a license under this part if:
- 5160 (a) the medical cannabis courier does not begin operations within one year after the day on which the department issues the initial license;
 - (b) the medical cannabis courier makes the same violation of this chapter three times;
 - (c) an individual described in Subsection (3)(b)(ii) is convicted, while the license is active, under state or federal law of:
- 5165 (i) a felony; or
 - (ii) after September 23, 2019, a misdemeanor for drug distribution; or
- (d) after a change of ownership described in Subsection (15)(c), the department determines that the medical cannabis courier no longer meets the minimum standards for licensure and operation of the medical cannabis courier described in this chapter.
 - (7) The department shall deposit the proceeds of a fee imposed by this section in the Qualified Patient Enterprise Fund.
- 5172 (8) The department shall begin accepting applications under this section on or before 5173 July 1, 2020.
- 5174 (9) The department's authority to issue a license under this section is plenary and is not subject to review.
 - (10) Each applicant for a license as a medical cannabis courier shall submit, at the time of application, from each individual who has a financial or voting interest of 2% or greater in the applicant or who has the power to direct or cause the management or control of the applicant:
 - (a) a fingerprint card in a form acceptable to the Department of Public Safety;
- 5181 (b) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the individual's fingerprints in the Federal Bureau of Investigation Next

5183	Generation Identification System's Rap Back Service; and
5184	(c) consent to a fingerprint background check by:
5185	(i) the Bureau of Criminal Identification; and
5186	(ii) the Federal Bureau of Investigation.
5187	(11) The Bureau of Criminal Identification shall:
5188	(a) check the fingerprints the applicant submits under Subsection (10) against the
5189	applicable state, regional, and national criminal records databases, including the Federal
5190	Bureau of Investigation Next Generation Identification System;
5191	(b) report the results of the background check to the department;
5192	(c) maintain a separate file of fingerprints that applicants submit under Subsection
5193	(10) for search by future submissions to the local and regional criminal records databases,
5194	including latent prints;
5195	(d) request that the fingerprints be retained in the Federal Bureau of Investigation
5196	Next Generation Identification System's Rap Back Service for search by future submissions
5197	to national criminal records databases, including the Next Generation Identification System
5198	and latent prints; and
5199	(e) establish a privacy risk mitigation strategy to ensure that the department only
5200	receives notifications for an individual with whom the department maintains an authorizing
5201	relationship.
5202	(12) The department shall:
5203	(a) assess an individual who submits fingerprints under Subsection (10) a fee in an
5204	amount that the department sets in accordance with Section 63J-1-504 for the services that
5205	the Bureau of Criminal Identification or another authorized agency provides under this
5206	section; and
5207	(b) remit the fee described in Subsection (12)(a) to the Bureau of Criminal
5208	Identification.
5209	(13) The department shall renew a license under this section every year if, at the time
5210	of renewal:
5211	(a) the licensee meets the requirements of this section; and
5212	(b) the licensee pays the department a license renewal fee in an amount that, subject
5213	to Subsection 26-61a-109(5), the department sets in accordance with Section 63J-1-504.
5214	(14) A person applying for a medical cannabis courier license shall submit to the

- 5215 department a proposed operating plan that complies with this section and that includes:
- 5216 (a) a description of the physical characteristics of any proposed facilities, including a 5217 floor plan and an architectural elevation, and delivery vehicles;
- 5218 (b) a description of the credentials and experience of each officer, director, or owner 5219 of the proposed medical cannabis courier;
 - (c) the medical cannabis courier's employee training standards;
- 5221 (d) a security plan; and

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- (e) storage and delivery protocols, both short and long term, to ensure that medical cannabis shipments are stored and delivered in a manner that is sanitary and preserves the integrity of the cannabis.
 - (15) (a) A medical cannabis courier license is not transferrable or assignable.
- (b) A medical cannabis courier shall report in writing to the department no later than
 10 business days before the date of any change of ownership of the medical cannabis
 courier.
 - (c) If the ownership of a medical cannabis courier changes by 50% or more:
 - (i) concurrent with the report described in Subsection (15)(b), the medical cannabis courier shall submit a new application described in Subsection (3)(b);
 - (ii) within 30 days of the submission of the application, the department shall:
- 5233 (A) conduct an application review; and
 - (B) award a license to the medical cannabis courier for the remainder of the term of the medical cannabis courier's license before the ownership change if the medical cannabis courier meets the minimum standards for licensure and operation of the medical cannabis courier described in this chapter; and
 - (iii) if the department approves the license application, notwithstanding Subsection (4), the medical cannabis courier shall pay a license fee that the department sets in accordance with Section 63J-1-504 in an amount that covers the board's cost of conducting the application review.
 - (16) (a) Except as provided in Subsection (15)(b), a person may not advertise regarding the transportation of medical cannabis.
- 5244 (b) Notwithstanding Subsection (15)(a) and subject to Section 26-61a-116, a licensed 5245 home delivery medical cannabis pharmacy or a licensed medical cannabis courier may 5246 advertise:

5247	(i) a green cross;
5248	(ii) the pharmacy's or courier's name and logo; and
5249	(iii) that the pharmacy or courier is licensed to transport medical cannabis shipments.
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5251	[26-61a-605.] <u>26B-4-240.</u> Medical cannabis shipment transportation.
5252	(1) The department shall ensure that each home delivery medical cannabis pharmacy
5253	is capable of delivering, directly or through a medical cannabis courier, medical cannabis
5254	shipments in a secure manner.
5255	(2) (a) A home delivery medical cannabis pharmacy may contract with a licensed
5256	medical cannabis courier to deliver medical cannabis shipments to fulfill electronic medical
5257	cannabis orders that the state central patient portal facilitates.
5258	(b) If a home delivery medical cannabis pharmacy enters into a contract described in
5259	Subsection (2)(a), the pharmacy shall:
5260	(i) impose security and personnel requirements on the medical cannabis courier
5261	sufficient to ensure the security and safety of medical cannabis shipments; and
5262	(ii) provide regular oversight of the medical cannabis courier.
5263	(3) Except for an individual with a valid medical cannabis card who transports a
5264	shipment the individual receives, an individual may not transport a medical cannabis
5265	shipment unless the individual is:
5266	(a) a registered pharmacy medical provider;
5267	(b) a registered medical cannabis pharmacy agent; or
5268	(c) a registered agent of the medical cannabis courier described in Subsection (2).
5269	(4) An individual transporting a medical cannabis shipment under Subsection (3) shall
5270	possess a physical or electronic transportation manifest that:
5271	(a) includes a unique identifier that links the medical cannabis shipment to a relevant
5272	inventory control system;
5273	(b) includes origin and destination information for the medical cannabis shipment the
5274	individual is transporting; and
5275	(c) indicates the departure and estimated arrival times and locations of the individual
5276	transporting the medical cannabis shipment.
5277	(5) In addition to the requirements in Subsections (3) and (4), the department may

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establish by rule, in collaboration with the Division of Professional Licensing and the Board of

- 5279 Pharmacy and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 5280 requirements for transporting medical cannabis shipments that are related to safety for 5281 human consumption of cannabis or a cannabis product.
- 5282 (6) (a) It is unlawful for an individual to transport a medical cannabis shipment with a manifest that does not meet the requirements of Subsection (4).
- 5284 (b) Except as provided in Subsection (6)(d), an individual who violates Subsection 5285 (6)(a) is:
 - (i) guilty of an infraction; and
- 5287 (ii) subject to a \$100 fine.

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- 5288 (c) An individual who is guilty of a violation described in Subsection (6)(b) is not guilty 5289 of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct 5290 underlying the violation described in Subsection (6)(b).
 - (d) If the individual described in Subsection (6)(a) is transporting more cannabis, cannabis product, or medical cannabis devices than the manifest identifies, except for a de minimis administrative error:
 - (i) this chapter does not apply; and
- 5295 (ii) the individual is subject to penalties under Title 58, Chapter 37, Utah Controlled 5296 Substances Act.

[26-61a-606.] <u>26B-4-241.</u> Medical cannabis courier agent -- Background check -- Registration card -- Rebuttable presumption.

- (1) An individual may not serve as a medical cannabis courier agent unless:
- (a) the individual is an employee of a licensed medical cannabis courier; and
- (b) the department registers the individual as a medical cannabis courier agent.
- (2) (a) The department shall, within 15 days after the day on which the department receives a complete application from a medical cannabis courier on behalf of a medical cannabis courier agent, register and issue a medical cannabis courier agent registration card to the prospective agent if the medical cannabis courier:
 - (i) provides to the department:
 - (A) the prospective agent's name and address;
 - (B) the name and address of the medical cannabis courier;
- (C) the name and address of each home delivery medical cannabis pharmacy with

5311	which the medical cannabis courier contracts to deliver medical cannabis shipments; and
5312	(D) the submission required under Subsection (2)(b);
5313	(ii) as reported under Subsection (2)(c), has not been convicted under state or federa
5314	law of:
5315	(A) a felony; or
5316	(B) after December 3, 2018, a misdemeanor for drug distribution; and
5317	(iii) pays the department a fee in an amount that, subject to Subsection
5318	26-61a-109(5), the department sets in accordance with Section 63J-1-504.
5319	(b) Except for an applicant reapplying for a medical cannabis courier agent
5320	registration card within less than one year after the expiration of the applicant's previous
5321	medical cannabis courier agent registration card, each prospective agent described in
5322	Subsection (2)(a) shall:
5323	(i) submit to the department:
5324	(A) a fingerprint card in a form acceptable to the Department of Public Safety; and
5325	(B) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the
5326	registration of the prospective agent's fingerprints in the Federal Bureau of Investigation Next
5327	Generation Identification System's Rap Back Service; and
5328	(ii) consent to a fingerprint background check by:
5329	(A) the Bureau of Criminal Identification; and
5330	(B) the Federal Bureau of Investigation.
5331	(c) The Bureau of Criminal Identification shall:
5332	(i) check the fingerprints the prospective agent submits under Subsection (2)(b)
5333	against the applicable state, regional, and national criminal records databases, including the
5334	Federal Bureau of Investigation Next Generation Identification System;
5335	(ii) report the results of the background check to the department;
5336	(iii) maintain a separate file of fingerprints that prospective agents submit under
5337	Subsection (2)(b) for search by future submissions to the local and regional criminal records
5338	databases, including latent prints;
5339	(iv) request that the fingerprints be retained in the Federal Bureau of Investigation
5340	Next Generation Identification System's Rap Back Service for search by future submissions
5341	to national criminal records databases, including the Next Generation Identification System
5342	and latent prints; and

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5343	(v) establish a privacy risk mitigation strategy to ensure that the department only
5344	receives notifications for an individual with whom the department maintains an authorizing
5345	relationship.
5346	(d) The department shall:
5347	(i) assess an individual who submits fingerprints under Subsection (2)(b) a fee in an
5348	amount that the department sets in accordance with Section 63J-1-504 for the services that
5349	the Bureau of Criminal Identification or another authorized agency provides under this
5350	section; and
5351	(ii) remit the fee described in Subsection (2)(d)(i) to the Bureau of Criminal
5352	Identification.
5353	(3) The department shall designate on an individual's medical cannabis courier agent
5354	registration card the name of the medical cannabis pharmacy where the individual is
5355	registered as an agent and each home delivery medical cannabis courier for which the
5356	medical cannabis courier delivers medical cannabis shipments.
5357	(4) (a) A medical cannabis courier agent shall comply with a certification standard that
5358	the department develops, in collaboration with the Division of Professional Licensing and the
5359	Board of Pharmacy, or a third-party certification standard that the department designates by
5360	rule in collaboration with the Division of Professional Licensing and the Board of Pharmacy
5361	and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
5362	(b) The department shall ensure that the certification standard described in
5363	Subsection (4)(a) includes training in:
5364	(i) Utah medical cannabis law:

- (ii) the medical cannabis shipment process; and
- (iii) medical cannabis courier agent best practices.
- 5367 (5) (a) A medical cannabis courier agent registration card expires two years after the day on which the department issues or renews the card. 5368
- (b) A medical cannabis courier agent may renew the agent's registration card if the 5369 5370 agent:
 - (i) is eligible for a medical cannabis courier agent registration card under this section;
 - (ii) certifies to the department in a renewal application that the information in Subsection (2)(a) is accurate or updates the information; and
 - (iii) pays to the department a renewal fee in an amount that:

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5375	(A) subject to Subsection 26-61a-109(5), the department sets in accordance with
5376	Section 63J-1-504; and
5377	(B) may not exceed the cost of the relatively lower administrative burden of renewal in
5378	comparison to the original application process.
5379	(6) The department may revoke or refuse to issue or renew the medical cannabis
5380	courier agent registration card of an individual who:
5381	(a) violates the requirements of this chapter; or
5382	(b) is convicted under state or federal law of:
5383	(i) a felony within the preceding 10 years; or
5384	(ii) after December 3, 2018, a misdemeanor for drug distribution.
5385	(7) A medical cannabis courier agent whom the department has registered under this
5386	section shall carry the agent's medical cannabis courier agent registration card with the agent
5387	at all times when:
5388	(a) the agent is on the premises of the medical cannabis courier, a medical cannabis
5389	pharmacy, or a medical cannabis cardholder's home address; and
5390	(b) the agent is handling a medical cannabis shipment.
5391	(8) If a medical cannabis courier agent handling a medical cannabis shipment
5392	possesses the shipment in compliance with Subsection (7):
5393	(a) there is a rebuttable presumption that the agent possesses the shipment legally;
5394	and
5395	(b) there is no probable cause, based solely on the agent's possession of the medical
5396	cannabis shipment that the agent is engaging in illegal activity.
5397	(9) (a) A medical cannabis courier agent who violates Subsection (7) is:
5398	(i) guilty of an infraction; and
5399	(ii) subject to a \$100 fine.
5400	(b) An individual who is guilty of a violation described in Subsection (9)(a) is not guilty
5401	of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct
5402	underlying the violation described in Subsection (9)(a).
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5404	[26-61a-607.] <u>26B-4-242.</u> Home delivery of medical cannabis shipments.
5405	(1) An individual may not receive and a medical cannabis pharmacy agent or a

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medical cannabis courier agent may not deliver a medical cannabis shipment from a home

5407	delivery medical cannabis pharmacy unless:
5408	(a) the individual receiving the shipment presents:
5409	(i) a valid form of photo identification; and
5410	(ii) (A) a valid medical cannabis card under the same name that appears on the valid
5411	form of photo identification; or
5412	(B) for a facility that a medical cannabis cardholder has designated as a caregiver
5413	under Subsection 26-61a-202(1)(b), evidence of the facility caregiver designation; and
5414	(b) the delivery occurs at:
5415	(i) the medical cannabis cardholder's home address that is on file in the state
5416	electronic verification system; or
5417	(ii) the facility that the medical cannabis cardholder has designated as a caregiver
5418	under Subsection 26-61a-202(1)(b).
5419	(2) Before a medical cannabis pharmacy agent or a medical cannabis courier agent
5420	distributes a medical cannabis shipment to a medical cannabis cardholder, the agent shall:
5421	(a) verify the shipment information using the state electronic verification system;
5422	(b) ensure that the individual satisfies the identification requirements in Subsection
5423	(1);
5424	(c) verify that payment is complete; and
5425	(d) record the completion of the shipment transaction in a manner such that the
5426	delivery of the shipment will later be recorded within a reasonable period in the electronic
5427	verification system.
5428	(3) The medical cannabis courier shall:
5429	(a) (i) store each medical cannabis shipment in a secure manner until the recipient
5430	medical cannabis cardholder receives the shipment or the medical cannabis courier returns
5431	the shipment to the home delivery medical cannabis pharmacy in accordance with
5432	Subsection (4); and
5433	(ii) ensure that only a medical cannabis courier agent is able to access the medical
5434	cannabis shipment until the recipient medical cannabis cardholder receives the shipment;
5435	(b) return any undelivered medical cannabis shipment to the home delivery medical
5436	cannabis pharmacy, in accordance with Subsection (4), after the medical cannabis courier
5437	has possessed the shipment for 10 business days; and
5438	(c) return any medical cannabis shipment to the home delivery medical cannabis

5439	pharmacy, in accordance with Subsection (4), if a medical cannabis cardholder refuses to
5440	accept the shipment.
5441	(4) (a) If a medical cannabis courier or home delivery medical cannabis pharmacy
5442	agent returns an undelivered medical cannabis shipment that remains unopened, the home
5443	delivery medical cannabis pharmacy may repackage or otherwise reuse the shipment.
5444	(b) If a medical cannabis courier or home delivery medical cannabis pharmacy agent
5445	returns an undelivered or refused medical cannabis shipment under Subsection (3) that
5446	appears to be opened in any way, the home delivery medical cannabis pharmacy shall
5447	dispose of the shipment by:
5448	(i) rendering the shipment unusable and unrecognizable before transporting the
5449	shipment from the home delivery medical cannabis pharmacy; and
5450	(ii) disposing of the shipment in accordance with:
5451	(A) federal and state laws, rules, and regulations related to hazardous waste;
5452	(B) the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.;
5453	(C) Title 19, Chapter 6, Part 5, Solid Waste Management Act; and
5454	(D) other regulations that the department makes in accordance with Title 63G,
5455	Chapter 3, Utah Administrative Rulemaking Act.
5456	
5457	Part 3. Health Care Access.
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5459	[26-10b-101.] <u>26B-4-301.</u> Definitions.
5460	As used in this [chapter] <u>part</u> :
5461	(1) "Account" means the Automatic External Defibrillator Restricted Account, created
5462	in Section 26-8b-602.
5463	(2) "Automatic external defibrillator" or "AED" means an automated or automatic
5464	computerized medical device that:
5465	(a) has received pre-market notification approval from the United States Food and
5466	Drug Administration, pursuant to 21 U.S.C. Sec. 360(k);
5467	(b) is capable of recognizing the presence or absence of ventricular fibrillation or rapid
5468	ventricular tachycardia;
5469	(c) is capable of determining, without intervention by an operator, whether
5470	defibrillation should be performed; and

- (d) upon determining that defibrillation should be performed, automatically charges,
 enabling delivery of, or automatically delivers, an electrical impulse through the chest wall
 and to a person's heart.
- 5474 (3) "Bureau" means the Bureau of Emergency Medical Services, within the department.
- 5476 (4) "Cardiopulmonary resuscitation" or "CPR" means artificial ventilation or external chest compression applied to a person who is unresponsive and not breathing.
- [(1)] (5) "Committee" means the Primary Care Grant Committee described in Section 26-10b-106.
- 5480 [(2)] (6) "Community based organization":
- 5481 (a) means a private entity; and
- 5482 (b) includes for profit and not for profit entities.
- [(3)] (7) "Cultural competence" means a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or profession and enables that system, agency, or profession to work effectively in cross-cultural situations.
- [(4) "Executive director" means the executive director of the department.]
- (8) "Emergency medical dispatch center" means a public safety answering point, as
 defined in Section 63H-7a-103, that is designated as an emergency medical dispatch center
 by the bureau.
- [(5)] (9) "Health literacy" means the degree to which an individual has the capacity to obtain, process, and understand health information and services needed to make appropriate health decisions.
- [(6)] (10) "Institutional capacity" means the ability of a community based organization to implement public and private contracts.
- [(7)] (11) "Medically underserved population" means the population of an urban or rural area or a population group that the committee determines has a shortage of primary health care.
- 5498 [(8)] (12) "Primary care grant" means a grant awarded by the department under 5499 Subsection 26-10b-102(1).
- 5500 [(9)] (a) "Primary health care" means:
- 5501 (i) basic and general health care services given when a person seeks assistance to 5502 screen for or to prevent illness and disease, or for simple and common illnesses and injuries;

5503	and
5504	(ii) care given for the management of chronic diseases.
5505	(b) "Primary health care" includes:
5506	(i) services of physicians, nurses, physician's assistants, and dentists licensed to
5507	practice in this state under Title 58, Occupations and Professions;
5508	(ii) diagnostic and radiologic services;
5509	(iii) preventive health services including perinatal services, well-child services, and
5510	other services that seek to prevent disease or its consequences;
5511	(iv) emergency medical services;
5512	(v) preventive dental services; and
5513	(vi) pharmaceutical services.
5514	[(10) "Program" means the primary care grant program created under this chapter.]
5515	(14) "Sudden cardiac arrest" means a life-threatening condition that results when a
5516	person's heart stops or fails to produce a pulse.
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5518	[26-8b-201.] <u>26B-4-302.</u> Authority to administer CPR or use an AED.
5519	(1) A person may administer CPR on another person without a license, certificate, or
5520	other governmental authorization if the person reasonably believes that the other person is in
5521	sudden cardiac arrest.
5522	(2) A person may use an AED on another person without a license, certificate, or
5523	other governmental authorization if the person reasonably believes that the other person is in
5524	sudden cardiac arrest.
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5526	[26-8b-202.] <u>26B-4-303.</u> Immunity.
5527	(1) Except as provided in Subsection (3), the following persons are not subject to civil
5528	liability for any act or omission relating to preparing to care for, responding to care for, or
5529	providing care to, another person who reasonably appears to be in sudden cardiac arrest:
5530	(a) a person authorized, under Section 26-8b-201, to administer CPR, who:
5531	(i) gratuitously and in good faith attempts to administer or administers CPR to another
5532	person; or
5533	(ii) fails to administer CPR to another person;
5534	(b) a person authorized, under Section 26-8b-201, to use an AED who:

5535	(i) gratuitously and in good faith attempts to use or uses an AED; or
5536	(ii) fails to use an AED;
5537	(c) a person that teaches or provides a training course in administering CPR or using
5538	an AED;
5539	(d) a person that acquires an AED;
5540	(e) a person that owns, manages, or is otherwise responsible for the premises or
5541	conveyance where an AED is located;
5542	(f) a person who retrieves an AED in response to a perceived or potential sudden
5543	cardiac arrest;
5544	(g) a person that authorizes, directs, or supervises the installation or provision of an
5545	AED;
5546	(h) a person involved with, or responsible for, the design, management, or operation
5547	of a CPR or AED program;
5548	(i) a person involved with, or responsible for, reporting, receiving, recording, updating
5549	giving, or distributing information relating to the ownership or location of an AED under Part
5550	3, Automatic External Defibrillator Databases; or
5551	(j) a physician who gratuitously and in good faith:
5552	(i) provides medical oversight for a public AED program; or
5553	(ii) issues a prescription for a person to acquire or use an AED.
5554	(2) This section does not relieve a manufacturer, designer, developer, marketer, or
5555	commercial distributor of an AED, or an accessory for an AED, of any liability.
5556	(3) The liability protection described in Subsection (1) does not apply to an act or
5557	omission that constitutes gross negligence or willful misconduct.
5558	
5559	[26-8b-301.] <u>26B-4-304.</u> Reporting location of automatic external defibrillators.
5560	(1) In accordance with Subsection (2) and except as provided in Subsection (3):
5561	(a) a person who owns or leases an AED shall report the person's name, address,
5562	and telephone number, and the exact location of the AED, in writing or by a web-based AED
5563	registration form, if available, to the emergency medical dispatch center that provides
5564	emergency dispatch services for the location where the AED is installed, if the person:
5565	(i) installs the AED;
5566	(ii) causes the AED to be installed; or

5567	(iii) allows the AED to be installed; and
5568	(b) a person who owns or leases an AED that is removed from a location where it is
5569	installed shall report the person's name, address, and telephone number, and the exact
5570	location from which the AED is removed, in writing or by a web-based AED registration form,
5571	if available, to the emergency medical dispatch center that provides emergency dispatch
5572	services for the location from which the AED is removed, if the person:
5573	(i) removes the AED;
5574	(ii) causes the AED to be removed; or
5575	(iii) allows the AED to be removed.
5576	(2) A report required under Subsection (1) shall be made within 14 days after the day
5577	on which the AED is installed or removed.
5578	(3) Subsection (1) does not apply to an AED:
5579	(a) at a private residence; or
5580	(b) in a vehicle or other mobile or temporary location.
5581	(4) A person who owns or leases an AED that is installed in, or removed from, a
5582	private residence may voluntarily report the location of, or removal of, the AED to the
5583	emergency medical dispatch center that provides emergency dispatch services for the
5584	location where the private residence is located.
5585	(5) The department may not impose a penalty on a person for failing to comply with
5586	the requirements of this section.
5587	
5588	[26-8b-302.] <u>26B-4-305.</u> Distributors to notify of reporting requirements.
5589	A person in the business of selling or leasing an AED shall, at the time the person
5590	provides, sells, or leases an AED to another person, notify the other person, in writing, of the
5591	reporting requirements described in Section 26-8b-301.
5592	
5593	[26-8b-303.] <u>26B-4-306.</u> Duties of emergency medical dispatch centers.
5594	An emergency medical dispatch center shall:
5595	(1) implement a system to receive and manage the information reported to the
5596	emergency medical dispatch center under Section 26-8b-301;
5597	(2) record in the system described in Subsection (1), all information received under

5598 Section 26-8b-301 within 14 days after the day on which the information is received;

- 5599 (3) inform a person who calls to report a potential incident of sudden cardiac arrest of 5600 the location of an AED located at the address of the potential sudden cardiac arrest; (4) provide verbal instructions to a person described in Subsection (3) to: 5601 5602 (a) help a person determine if a patient is in cardiac arrest; and 5603 (b) if needed: 5604 (i) provide direction to start CPR; 5605 (ii) offer instructions on how to perform CPR; or
- (iii) offer instructions on how to use an AED, if one is available; and 5606
- 5607 (5) provide the information contained in the system described in Subsection (1), upon 5608 request, to the bureau.

[26-8b-401.] **26B-4-307**. Education and training. 5610

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- 5611 (1) The bureau shall work in cooperation with federal, state, and local agencies and 5612 schools, to encourage individuals to complete courses on the administration of CPR and the 5613 use of an AED.
- 5614 (2) A person who owns or leases an AED shall encourage each person who is likely to use the AED to complete courses on the administration of CPR and the use of an AED. 5615

[26-8b-402.] 26B-4-308. AEDs for demonstration purposes.

- (1) Any AED used solely for demonstration or training purposes, which is not operational for emergency use is, except for the provisions of this section, exempt from the provisions of this chapter.
- (2) The owner of an AED described in Subsection (1) shall clearly mark on the exterior of the AED that the AED is for demonstration or training use only.

[26-8b-501.] 26B-4-309. Tampering with an AED prohibited -- Penalties. 5624

A person is guilty of a class C misdemeanor if the person removes, tampers with, or otherwise disturbs an AED, AED cabinet or enclosure, or AED sign, unless:

- (1) the person is authorized by the AED owner for the purpose of:
- (a) inspecting the AED or AED cabinet or enclosure; or
- 5629 (b) performing maintenance or repairs on the AED, the AED cabinet or enclosure, a wall or structure that the AED cabinet or enclosure is directly attached to, or an AED sign; 5630

5631	(2) the person is responding to, or providing care to, a potential sudden cardiac arrest
5632	patient; or
5633	(3) the person acts in good faith with the intent to support, and not to violate, the
5634	recognized purposes of the AED.
5635	
5636	[26-10b-102.] <u>26B-4-310.</u> Department to award grants Applications.
5637	(1) Within appropriations specified by the Legislature for this purpose, the department
5638	may, in accordance with the recommendation of the committee, award a grant to a public or
5639	nonprofit entity to provide primary health care to a medically underserved population.
5640	(2) When awarding a grant under Subsection (1), the department shall, in accordance
5641	with the committee's recommendation, consider:
5642	(a) the content of a grant application submitted to the department;
5643	(b) whether an application is submitted in the manner and form prescribed by the
5644	department; and
5645	(c) the criteria established in Section 26-10b-103.
5646	(3) The application for a grant under Subsection (2)(a) shall contain:
5647	(a) a requested award amount;
5648	(b) a budget; and
5649	(c) a narrative plan of the manner in which the applicant intends to provide the
5650	primary health care described in Subsection (1).
5651	
5652	[26-10b-103.] <u>26B-4-311.</u> Content of grant applications.
5653	An applicant for a grant under [this chapter] Section 26B-4-310 shall include, in an
5654	application:
5655	(1) a statement of specific, measurable objectives, and the methods the applicant will
5656	use to assess the achievement of those objectives;
5657	(2) the precise boundaries of the area the applicant will serve, including a description
5658	of the medically underserved population the applicant will serve using the grant;
5659	(3) the results of a need assessment that demonstrates that the population the
5660	applicant will serve has a need for the services provided by the applicant;

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grant along with a statement justifying the use of any grant funds for the personnel;

(4) a description of the personnel responsible for carrying out the activities of the

5663	(5) evidence that demonstrates the applicant's existing financial and professional
5664	assistance and any attempts by the applicant to obtain financial and professional assistance

(6) a list of services the applicant will provide;

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- 5666 (7) the schedule of fees, if any, the applicant will charge;
- 5667 (8) the estimated number of individuals the applicant will serve with the grant award; 5668 and
- 5669 (9) any other information required by the department in consultation with the committee.

5672 [26-10b-104.] <u>26B-4-312.</u> Process and criteria for awarding primary care grants.

- (1) The department shall review and rank applications based on the criteria in this section and transmit the applications to the committee for review.
- 5676 (2) The committee shall, after reviewing the applications transferred to the committee under Subsection (1), make recommendations to the executive director.
- 5678 (3) The executive director shall, in accordance with the committee's recommendations, decide which applications to award grants under Subsection 26-10b-102(1).
 - (4) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form, the process, and the criteria the department will use in reviewing, ranking, and awarding grants and contracts under this chapter.
 - (5) When reviewing, ranking, and awarding a primary care grant under Subsection 26-10b-102(1), the department shall consider the extent to which an applicant:
- 5687 (a) demonstrates that the area or a population group the applicant will serve under 5688 the application has a shortage of primary health care and that the primary health care will be 5689 located so that it provides assistance to the greatest number of individuals in the population 5690 group;
- 5691 (b) utilizes other sources of funding, including private funding, to provide primary 5692 health care:
- 5693 (c) demonstrates the ability and expertise to serve a medically underserved population;

5695	(d) agrees to submit a report to the committee annually; and
5696	(e) meets other criteria determined by the department in consultation with the
5697	committee.
5698	(6) The department may use up to 5% of the funds appropriated by the Legislature to
5699	the primary care grant program under this chapter to pay the costs of administering the
5700	program.
5701	
5702	[26-10b-107.] <u>26B-4-313.</u> Community education and outreach contracts.
5703	(1) The department may, as funding permits, contract with community based
5704	organizations for the purpose of developing culturally and linguistically appropriate programs
5705	and services for low income and medically underserved populations to accomplish one or
5706	more of the following:
5707	(a) to educate individuals:
5708	(i) to use private and public health care coverage programs, products, services, and
5709	resources in a timely, effective, and responsible manner;
5710	(ii) to pursue preventive health care, health screenings, and disease management;
5711	and
5712	(iii) to locate health care programs and services;
5713	(b) to assist individuals to develop:
5714	(i) personal health management;
5715	(ii) self-sufficiency in daily care; and
5716	(iii) life and disease management skills;
5717	(c) to support translation of health materials and information;
5718	(d) to facilitate an individual's access to primary care and providers, including mental
5719	health services; and
5720	(e) to measure and report empirical results of the pilot project.
5721	(2) When awarding a contract for community based services under Subsection (1),
5722	the department shall consider the extent to which the applicant:
5723	(a) demonstrates that the area or a population group to be served under the
5724	application is a medically underserved population and that the services will be located to
5725	provide assistance to the greatest number of individuals residing in the area or included in

the population group;

- 5727 (b) utilizes other sources of funding, including private funding, to provide the services described in Subsection (1);
- (c) demonstrates the ability and expertise to serve medically underserved
 populations, including individuals with limited English-speaking ability, single heads of
 households, the elderly, individuals with low income, and individuals with a chronic disease;
 - (d) meets other criteria determined by the department; and
- 5733 (e) demonstrates the ability to empirically measure and report the results of all contract supported activities.
 - (3) The department may only award a contract under Subsection (1):
 - (a) in accordance with Title 63G, Chapter 6a, Utah Procurement Code;
- (b) that contains the information described in Section 26-10b-103, relating to grants; and
- (c) that complies with Subsections (4) and (5).

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- (4) An applicant under this chapter shall demonstrate to the department that the applicant will not deny services to a person because of the person's inability to pay for the services.
- (5) Subsection (4) does not preclude an applicant from seeking payment from the person receiving services, a third party, or a government agency if:
 - (a) the applicant is authorized to charge for the services; and
- (b) the person, third party, or government agency is under legal obligation to pay for the services.
- (6) The department shall maximize the use of federal matching funds received for services under Subsection (1) to fund additional contracts under Subsection (1).

[26-9-1.] <u>26B-4-314.</u> Assistance to rural communities by department.

The department shall assist rural communities in dealing with primary health care needs relating to recruiting health professionals, planning, and technical assistance. The department shall assist the communities, at their request, at any stage of development of new or expanded primary health care services and shall work with them to improve primary health care by providing information to increase the effectiveness of their systems, to decrease duplication and fragmentation of services, and to maximize community use of private gifts, and local, state, and federal grants and contracts.

[26-9-2.] 26B-4-315. Responsibility of department for coordinating rural health 5759 5760 programs.

The department shall be the lead agency responsible for coordinating rural health programs and shall insure that resources available for rural health are efficiently and effectively used.

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[26-9-3.] 26B-4-316. Rural health development initiatives.

- (1) (a) The University of Utah Health Science Center shall use any appropriations it receives for developing area health education centers to establish and maintain an area health education center program in accordance with this section.
- (b) Implementation and execution of the area health education center program is contingent upon appropriations from the Legislature.
- (2) (a) The area health education center program shall consist of a central program office at the University of Utah Health Science Center. The program office shall establish and operate a statewide, decentralized, regional program with emphasis on addressing rural health professions workforce education and training needs.
- 5775 (b) The area health education center program shall have five regional centers serving 5776 the following geographic areas:
 - (i) the northern center serving Box Elder, Cache, Rich, Weber, and Morgan counties;
- 5778 (ii) the crossroads center serving Salt Lake, Wasatch, Summit, Tooele, Utah, and 5779 Davis counties:
- 5780 (iii) the central center serving Juab, Millard, Piute, Sanpete, Sevier, and Wayne 5781 counties;
- (iv) the eastern center serving Carbon, Daggett, Duchesne, Emery, Grand, San Juan, 5782 5783 and Uintah counties; and
- 5784 (v) the southwest center serving Beaver, Garfield, Iron, Kane, and Washington 5785 counties.
- 5786 (3) The area health education center program shall attempt to acquire funding from 5787 state, local, federal, and private sources.
- (4) Each area health education center shall provide community-based health 5788 5789 professions education programming for the geographic area described in Subsection (2)(b) 5790 of this section.

5791	[26-9-5.] <u>26B-4-317.</u> Rural County Health Care Special Service District
5792	Retirement Grant Program.
5793	(1) As used in this section:
5794	(a) "Participating employer" means an employer that was required to participate in the
5795	Utah State Retirement System under Section 49-12-201, 49-12-202, 49-13-201, or
5796	49-13-202.
5797	(b) "Retirement liability" means an obligation in excess of \$750,000 owed to the Utah
5798	State Retirement Office by a rural county health care special service district as a participating
5799	employer.
5800	(c) "Rural county health care special service district" means a special service district
5801	formed to provide health care in a third, fourth, fifth, or sixth class county as defined in
5802	Section 17-50-501.
5803	(2) Because there is a compelling statewide public purpose in promoting health care
5804	in Utah's rural counties, and particularly in ensuring the continued existence and financial
5805	viability of hospital services provided by rural county health care special service districts,
5806	there is created a grant program to assist rural county health care special service districts in
5807	meeting a retirement liability.
5808	(3) (a) Subject to legislative appropriation and this Subsection (3), the department
5809	shall make grants to rural county health care special service districts.
5810	(b) To qualify for a grant, a rural county health care special service district shall:
5811	(i) file a grant application with the department detailing:
5812	(A) the name of the rural county health care special service district;
5813	(B) the estimated total amount of the retirement liability;
5814	(C) the grant amount that the rural county health care special service district is
5815	requesting; and
5816	(D) the amount of matching funds to be provided by the rural county health care
5817	special service district to help fund the retirement liability as required by Subsection (3)(d);
5818	and
5819	(ii) commit to provide matching funds as required by Subsection (3)(d).
5820	(c) The department shall review each grant application and, subject to legislative
5821	appropriation, award grants to each rural health care special service district that qualifies for
5822	a grant under Subsection (3)(b).

5823	(d) The department may not award a grant to a rural county health care special
5824	service district unless the rural county health care special service district commits to provide
5825	matching funds to the grant equal to at least 40% of the amount of the grant.
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5827	[26-10-2.] <u>26B-4-318.</u> Maternal and child health provided by department.
5828	The department shall, as funding permits, provide for maternal and child health
5829	services and services for children with a disability if the individual needs the services and the
5830	individual cannot reasonably obtain the services from other sources.
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5832	[26-10-6.] <u>26B-4-319.</u> Testing of newborn infants.
5833	(1) Except in the case where parents object on the grounds that they are members of
5834	a specified, well-recognized religious organization whose teachings are contrary to the tests
5835	required by this section, a newborn infant shall be tested for:
5836	(a) phenylketonuria (PKU);
5837	(b) other heritable disorders which may result in an intellectual or physical disability or
5838	death and for which:
5839	(i) a preventive measure or treatment is available; and
5840	(ii) there exists a reliable laboratory diagnostic test method;
5841	(c) (i) an infant born in a hospital with 100 or more live births annually, hearing loss;
5842	and
5843	(ii) an infant born in a setting other than a hospital with 100 or more live births
5844	annually, hearing loss; and
5845	(d) critical congenital heart defects using pulse oximetry.
5846	(2) In accordance with Section 26B-1-209, the department may charge fees for:
5847	(a) materials supplied by the department to conduct tests required under Subsection
5848	(1);
5849	(b) tests required under Subsection (1) conducted by the department;
5850	(c) laboratory analyses by the department of tests conducted under Subsection (1);
5851	and
5852	(d) the administrative cost of follow-up contacts with the parents or guardians of
5853	tested infants.

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(3) Tests for hearing loss described in Subsection (1) shall be based on one or more

methods approved by the Newborn Hearing Screening Committee, including: 5855 5856 (a) auditory brainstem response; (b) automated auditory brainstem response; and 5857 (c) evoked otoacoustic emissions. 5858 5859 (4) Results of tests for hearing loss described in Subsection (1) shall be reported to: 5860 (a) the department; and 5861 (b) when results of tests for hearing loss under Subsection (1) suggest that additional 5862 diagnostic procedures or medical interventions are necessary: 5863 (i) a parent or guardian of the infant; 5864 (ii) an early intervention program administered by the department in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1431 et seq.; and 5865 5866 (iii) the Utah Schools for the Deaf and the Blind, created in Section 53E-8-201. (5) (a) There is established the Newborn Hearing Screening Committee. 5867 5868 (b) The committee shall advise the department on: 5869 (i) the validity and cost of newborn infant hearing loss testing procedures; and 5870 (ii) rules promulgated by the department to implement this section. 5871 (c) The committee shall be composed of at least 11 members appointed by the 5872 executive director, including: 5873 (i) one representative of the health insurance industry: 5874 (ii) one pediatrician; 5875 (iii) one family practitioner: 5876 (iv) one ear, nose, and throat specialist nominated by the Utah Medical Association; 5877 (v) two audiologists nominated by the Utah Speech-Language-Hearing Association; 5878 (vi) one representative of hospital neonatal nurseries: 5879 (vii) one representative of the Early Intervention Baby Watch Program administered 5880 by the department; (viii) one public health nurse; 5881 5882 (ix) one consumer; and 5883 (x) the executive director or the executive director's designee. 5884 (d) Of the initial members of the committee, the executive director shall appoint as 5885 nearly as possible half to two-year terms and half to four-year terms. Thereafter, 5886 appointments shall be for four-year terms except:

- (i) for those members who have been appointed to complete an unexpired term; and
- 5888 (ii) as necessary to ensure that as nearly as possible the terms of half the appointments expire every two years.
- 5890 (e) A majority of the members constitute a quorum, and a vote of the majority of the members present constitutes an action of the committee.
 - (f) The committee shall appoint a chairman from the committee's membership.
- 5893 (g) The committee shall meet at least quarterly.
- 5894 (h) A member may not receive compensation or benefits for the member's service, 5895 but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;

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- (ii) Section 63A-3-107; and
- 5898 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
 - (i) The department shall provide staff for the committee.
 - (6) Before implementing the test required by Subsection (1)(d), the department shall conduct a pilot program for testing newborns for critical congenital heart defects using pulse oximetry. The pilot program shall include the development of:
 - (a) appropriate oxygen saturation levels that would indicate a need for further medical follow-up; and
 - (b) the best methods for implementing the pulse oximetry screening in newborn care units.

[26-10-7.] <u>26B-4-320.</u> Dental health programs -- Appointment of director.

The department shall establish and promote programs to protect and improve the dental health of the public. The executive director shall appoint a director of the dental health program who shall be a dentist licensed in the state with at least one year of training in an accredited school of public health or not less than two years of experience in public health dentistry.

- 5916 [26-10-9.] 26B-4-321. Immunizations -- Consent of minor to treatment.
- 5917 (1) This section:
- 5918 (a) is not intended to interfere with the integrity of the family or to minimize the rights

5919	of parents or children; and
5920	(b) applies to a minor, who at the time care is sought is:
5921	(i) married or has been married;
5922	(ii) emancipated as provided for in Section 80-7-105;
5923	(iii) a parent with custody of a minor child; or
5924	(iv) pregnant.
5925	(2) (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:
5926	(i) vaccinations against epidemic infections and communicable diseases as defined in
5927	Section [26-6-2] <u>26B-6-4XX</u> ; and
5928	(ii) examinations and vaccinations required to attend school as provided in Title 53G,
5929	Public Education System Local Administration.
5930	(b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the
5931	vaccinations described in Subsections (2)(a)(i) and (ii), and the vaccine for human
5932	papillomavirus only if:
5933	(i) the minor represents to the health care provider that the minor is an abandoned
5934	minor as defined in Section 76-5-109.3; and
5935	(ii) the health care provider makes a notation in the minor's chart that the minor
5936	represented to the health care provider that the minor is an abandoned minor under Section
5937	76-5-109.3.
5938	(c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a
5939	minor.
5940	(3) The consent of the minor pursuant to this section:
5941	(a) is not subject to later disaffirmance because of the minority of the person receiving
5942	the medical services;
5943	(b) is not voidable because of minority at the time the medical services were provided;
5944	(c) has the same legal effect upon the minor and the same legal obligations with
5945	regard to the giving of consent as consent given by a person of full age and capacity; and
5946	(d) does not require the consent of any other person or persons to authorize the
5947	medical services described in Subsections (2)(a) and (b).
5948	(4) A health care provider who provides medical services to a minor in accordance
5949	with the provisions of this section is not subject to civil or criminal liability for providing the

services described in Subsections (2)(a) and (b) without obtaining the consent of another

5951	person prior to rendering the medical services.
5952	(5) This section does not remove the requirement for parental consent or notice when
5953	required by Section 76-7-304 or 76-7-304.5.
5954	(6) The parents, parent, or legal guardian of a minor who receives medical services
5955	pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services
5956	unless the parents, parent, or legal guardian consented to the medical services.
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5958	[26-10-11.] <u>26B-4-322.</u> Children's Hearing Aid Program [Advisory Committee
5959	Restricted Account] Rulemaking.
5960	(1) The department shall offer a program to provide hearing aids to children who
5961	qualify under this section.
5962	(2) The department shall provide hearing aids to a child who:
5963	(a) is younger than six years old;
5964	(b) is a resident of Utah;
5965	(c) has been diagnosed with hearing loss by:
5966	(i) an audiologist with pediatric expertise; and
5967	(ii) a physician or physician assistant;
5968	(d) provides documentation from an audiologist with pediatric expertise certifying that
5969	the child needs hearing aids;
5970	(e) has obtained medical clearance by a medical provider for hearing aid fitting;
5971	(f) does not qualify to receive a contribution that equals the full cost of a hearing aid
5972	from the state's Medicaid program or the Utah Children's Health Insurance Program; and
5973	(g) meets the financial need qualification criteria established by the department by
5974	rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
5975	participation in the program.
5976	[(3) (a) There is established the Children's Hearing Aid Advisory Committee.
5977	(b) The committee shall be composed of five members appointed by the executive
5978	director, and shall include:
5979	(i) one audiologist with pediatric expertise;
5980	(ii) one speech language pathologist;
5981	(iii) one teacher, certified under Title 53E, Public Education System State

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Administration, as a teacher of the deaf or a listening and spoken language therapist;

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5983 (iv) one ear, nose, and throat specialist; and 5984 (v) one parent whose child: (A) is six years old or older; and 5985 (B) has hearing loss. 5986 5987 (c) A majority of the members constitutes a quorum. (d) A vote of the majority of the members, with a quorum present, constitutes an 5988 action of the committee. 5989 5990 (e) The committee shall elect a chair from its members. 5991 (f) The committee shall: 5992 (i) meet at least quarterly; (ii) recommend to the department medical criteria and procedures for selecting 5993 children who may qualify for assistance from the account; and 5994 5995 (iii) review rules developed by the department. 5996 (g) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with Sections 63A-3-106 and 5997 5998 63A-3-107 and rules made by the Division of Finance, pursuant to Sections 63A-3-106 and 63A-3-107. 5999 6000 (h) The department shall provide staff to the committee. 6001 (4) (a) There is created within the General Fund a restricted account known as the 6002 "Children's Hearing Aid Program Restricted Account." 6003 (b) The Children's Hearing Aid Program Restricted Account shall consist of: 6004 (i) amounts appropriated to the account by the Legislature; and 6005 (ii) gifts, grants, devises, donations, and bequests of real property, personal property, or services, from any source, or any other conveyance that may be made to the account from 6006 6007 private sources. 6008 (c) Upon appropriation, all actual and necessary operating expenses for the committee described in Subsection (3) shall be paid by the account. 6009 (d) Upon appropriation, no more than 9% of the account money may be used for the 6010 department's expenses. 6011 (e) If this account is repealed in accordance with Section 63I-1-226, any remaining 6012 assets in the account shall be deposited into the General Fund.] 6013 (5) (a) For each child who receives a hearing aid under Subsection (2), the 6014

department shall maintain a record of the cost of providing services to the child under this section.

- (b) No more than six months after services are provided to a child under this section,
 the department shall send a letter to the family of the child who received services that
 includes information regarding:
 - (i) the total amount paid by the department to provide services to the child under this section; and
 - (ii) the process by which the family may donate all or part of the amount paid to provide services to the child to fund the Children's Hearing Aid Program.
 - (c) All donations made under Subsection (6)(c) shall be deposited into the Children's Hearing Aid Program Restricted Account created in Subsection (4)(a).
 - (6) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for:
 - (a) identifying the children who are financially eligible to receive services under the program;
 - (b) reviewing and paying for services provided to a child under the program; and
 - (c) an individual to donate to the program all or part of the cost of providing services to a child under this section, without regard to whether the donation is made in response to the letter described in Subsection (5)(b).

[26-10-13.] <u>26B-4-323.</u> Reporting results of a test for hearing loss.

- (1) As used in this section, "health care provider" means the same as that term is defined in Section 78B-3-403.
- (2) Except as provided in Subsection (3), a health care provider shall report results of a test for hearing loss to the Utah Schools for the Deaf and the Blind if:
- (a) the results suggest that additional diagnostic procedures or medical interventions are necessary; and
 - (b) the individual tested for hearing loss is under the age of 22.
- 6043 (3) A health care provider may not make the report of an individual's results described in Subsection (2) if the health care provider receives a request to not make the report from:
 - (a) the individual, if the individual is not a minor; or
 - (b) the individual's parent or guardian, if the individual is a minor.

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6047	Part 4. School Health.
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6049	[26-53-102.] <u>26B-4-401.</u> Definitions.
6050	As used in this [chapter] <u>part</u> :
6051	(1) "Agent" means a coach, teacher, employee, representative, or volunteer.
6052	(2) (a) "Amateur sports organization" means, except as provided in Subsection (2)(b):
6053	(i) a sports team;
6054	(ii) a public or private school;
6055	(iii) a public or private sports league;
6056	(iv) a public or private sports camp; or
6057	(v) any other public or private organization that organizes, manages, or sponsors a
6058	sporting event for its members, enrollees, or attendees.
6059	(b) "Amateur sports organization" does not include a professional:
6060	(i) team;
6061	(ii) league; or
6062	(iii) sporting event.
6063	(3) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.
6064	(a) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty
6065	breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.
6066	(b) Causes of anaphylaxis may include insect sting, food allergy, drug reaction, and
6067	<u>exercise.</u>
6068	(4) "Asthma action plan" means a written plan:
6069	(a) developed with a school nurse, a student's parent or guardian, and the student's
6070	health care provider to help control the student's asthma; and
6071	(b) signed by the student's:
6072	(i) parent or guardian; and
6073	(ii) health care provider.
6074	(5) "Asthma emergency" means an episode of respiratory distress that may include
6075	symptoms such as wheezing, shortness of breath, coughing, chest tightness, or breathing
6076	difficulty.
6077	[(3)] (6) "Child" means an individual who is under the age of 18.
6078	(7) "Epinephrine auto-injector" means a portable, disposable drug delivery device that

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6079 contains a measured, single dose of epinephrine that is used to treat a person suffering a 6080 potentially fatal anaphylactic reaction. (8) "Health care provider" means an individual who is licensed as: 6081 6082 (a) a physician under Title 58, Chapter 67, Utah Medical Practice Act: 6083 (b) a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; (c) an advanced practice registered nurse under Section 58-31b-302; or 6084 (d) a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act. 6085 6086 (9) "Pharmacist" means the same as that term is defined in Section 58-17b-102. 6087 (10) "Pharmacy intern" means the same as that term is defined in Section 6088 58-17b-102. (11) "Physician" means the same as that term is defined in Section 58-67-102. 6089 6090 (12) "Qualified adult" means a person who: 6091 (a) is 18 years of age or older; and 6092 (b) (i) for purposes of administering an epinephrine auto-injector, has successfully 6093 completed the training program established in Section 26-41-104; and 6094 (ii) for purposes of administering stock albuterol, has successfully completed the 6095 training program established in Section 26-41-104.1. 6096 (13) "Qualified epinephrine auto-injector entity": (a) means a facility or organization that employs, contracts with, or has a similar 6097 6098 relationship with a qualified adult who is likely to have contact with another person who may 6099 experience anaphylaxis; and 6100 (b) includes: 6101 (i) recreation camps; (ii) an education facility, school, or university; 6102 6103 (iii) a day care facility; 6104 (iv) youth sports leagues; 6105 (v) amusement parks; (vi) food establishments; 6106 6107 (vii) places of employment; and 6108 (viii) recreation areas. [(4)] (14) "Qualified health care provider" means a health care provider who: 6109 6110 (a) is licensed under Title 58, Occupations and Professions; and

6111 (b) may evaluate and manage a concussion within the health care provider's scope of 6112 practice. (15) "Qualified stock albuterol entity" means a public or private school that employs, 6113 6114 contracts with, or has a similar relationship with a qualified adult who is likely to have contact 6115 with another person who may experience an asthma emergency. [(5)] (16) (a) "Sporting event" means any of the following athletic activities that is 6116 6117 organized, managed, or sponsored by an organization: 6118 (i) a game; 6119 (ii) a practice; 6120 (iii) a sports camp; (iv) a physical education class; 6121 6122 (v) a competition; or 6123 (vi) a tryout. 6124 (b) "Sporting event" does not include: 6125 (i) the issuance of a lift ticket or pass by a ski resort, the use of the ticket or pass, or a 6126 ski or snowboarding class or school at a ski resort, unless the skiing or snowboarding is part 6127 of a camp, team, or competition that is organized, managed, or sponsored by the ski resort; 6128 (ii) as applied to a government entity, merely making available a field, facility, or other 6129 location owned, leased, or controlled by the government entity to an amateur sports 6130 organization or a child, regardless of whether the government entity charges a fee for the 6131 use: or 6132 (17) "Stock albuterol" means a prescription inhaled medication: 6133 (a) used to treat asthma; and (b) that may be delivered through a device, including: 6134 6135 (i) an inhaler; or 6136 (ii) a nebulizer with a mouthpiece or mask. 6137 (iii) free play or recess taking place during school hours. [(6)] (18) "Traumatic head injury" means an injury to the head arising from blunt 6138 6139 trauma, an acceleration force, or a deceleration force, with one of the following observed or self-reported conditions attributable to the injury: 6140 6141 (a) transient confusion, disorientation, or impaired consciousness;

(b) dysfunction of memory;

6143	(c) loss of consciousness; or
6144	(d) signs of other neurological or neuropsychological dysfunction, including:
6145	(i) seizures;
6146	(ii) irritability;
6147	(iii) lethargy;
6148	(iv) vomiting;
6149	(v) headache;
6150	(vi) dizziness; or
6151	(vii) fatigue.
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6153	[26-10-5.] <u>26B-4-402.</u> Plan for school health services.
6154	The department shall establish a plan for school health services for pupils in
6155	elementary and secondary schools. The department shall cooperate with the State Board of
6156	Education and local health departments in developing such plan and shall coordinate
6157	activities between these agencies. The plan may provide for the delivery of health services
6158	by and through intermediate and local school districts and local health departments.
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6160	[26-53-201.] <u>26B-4-403.</u> Adoption and enforcement of concussion and head
6161	injury policy Notice of policy to parent or guardian.
6162	Each amateur sports organization shall:
6163	(1) adopt and enforce a concussion and head injury policy that:
6164	(a) is consistent with the requirements of Section 26-53-301; and
6165	(b) describes the nature and risk of:
6166	(i) a concussion or a traumatic head injury; and
6167	(ii) continuing to participate in a sporting event after sustaining a concussion or a
6168	traumatic head injury;
6169	(2) ensure that each agent of the amateur sports organization is familiar with, and has
6170	a copy of, the concussion and head injury policy; and
6171	(3) before permitting a child to participate in a sporting event of the amateur sports
6172	organization:
6173	(a) provide a written copy of the concussion and head injury policy to a parent or legal
6174	guardian of a child; and

6175	(b) obtain the signature of a parent or legal guardian of the child, acknowledging that
6176	the parent or legal guardian has read, understands, and agrees to abide by, the concussion
6177	and head injury policy.
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6179	[26-53-301.] <u>26B-4-404.</u> Removal of child suspected of sustaining concussion
6180	or a traumatic head injury Medical clearance required before return to participation.
6181	(1) An amateur sports organization, and each agent of the amateur sports
6182	organization, shall:
6183	(a) immediately remove a child from participating in a sporting event of the amateur
6184	sports organization if the child is suspected of sustaining a concussion or a traumatic head
6185	injury; and
6186	(b) prohibit the child described in Subsection (1)(a) from participating in a sporting
6187	event of the amateur sports organization until the child:
6188	(i) is evaluated by a qualified health care provider who is trained in the evaluation and
6189	management of a concussion; and
6190	(ii) provides the amateur sports organization with a written statement from the
6191	qualified health care provider described in Subsection (1)(b)(i) stating that:
6192	(A) the qualified health care provider has, within three years before the day on which
6193	the written statement is made, successfully completed a continuing education course in the
6194	evaluation and management of a concussion; and
6195	(B) the child is cleared to resume participation in the sporting event of the amateur
6196	sports organization.
6197	(2) This section does not create a new cause of action.
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6199	[26-53-401.] <u>26B-4-405.</u> School nurses evaluating student injuries.
6200	(1) A school nurse may assess a child who is suspected of sustaining a concussion or
6201	a traumatic head injury during school hours on school property regardless of whether the
6202	nurse has received specialized training in the evaluation and management of a concussion.
6203	(2) A school nurse who does not meet the requirements of Subsections
6204	26-53-301(1)(b)(i) and (1)(b)(ii)(A), but who assesses a child who is suspected of sustaining

a concussion or traumatic head injury under Subsection (1):

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(a) shall refer the child to a qualified health care provider who is trained in the

6207	evaluation and management of a concussion; and
6208	(b) may not provide a written statement permitting the child to resume participation in

- free play or physical education class under Subsection 26-53-301(1)(b)(ii). 6209
- 6210 (3) A school nurse shall undergo training in the evaluation and management of a 6211 concussion, as funding allows.

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- [26-41-103.] 26B-4-406. Voluntary participation.
- 6214 (1) This chapter does not create a duty or standard of care for:
- 6215 (a) a person to be trained in the use and storage of epinephrine auto-injectors or 6216 stock albuterol; or
- 6217 (b) except as provided in Subsection (5), a qualified epinephrine auto-injector entity to 6218 store epinephrine auto-injectors or a qualified stock albuterol entity to store stock albuterol on 6219 its premises.
 - (2) Except as provided in Subsections (3) and (5), a decision by a person to successfully complete a training program under Section 26-41-104 or 26-41-104.1 and to make emergency epinephrine auto-injectors or stock albuterol available under the provisions of this chapter is voluntary.
 - (3) A school, school board, or school official may not prohibit or dissuade a teacher or other school employee at a primary or secondary school in the state, either public or private, from:
 - (a) completing a training program under Section 26-41-104 or 26-41-104.1;
- (b) possessing or storing an epinephrine auto-injector or stock albuterol on school 6228 6229 property if:
 - (i) the teacher or school employee is a qualified adult; and
- (ii) the possession and storage is in accordance with the training received under 6231 6232 Section 26-41-104 or 26-41-104.1; or
 - (c) administering an epinephrine auto-injector or stock albuterol to any person, if:
 - (i) the teacher or school employee is a qualified adult; and
- 6235 (ii) the administration is in accordance with the training received under Section 6236 26-41-104 or 26-41-104.1.
- 6237 (4) A school, school board, or school official may encourage a teacher or other school employee to volunteer to become a qualified adult. 6238

6239	(5) (a) Each primary or secondary school in the state, both public and private, shall
6240	make an emergency epinephrine auto-injector available to any teacher or other school
6241	employee who:
6242	(i) is employed at the school; and
6243	(ii) is a qualified adult.
6244	(b) This section does not require a school described in Subsection (5)(a) to keep
6245	more than one emergency epinephrine auto-injector on the school premises, so long as it
6246	may be quickly accessed by a teacher or other school employee, who is a qualified adult, in
6247	the event of an emergency.
6248	(6) (a) Each primary or secondary school in the state, both public and private, may
6249	make stock albuterol available to any school employee who:
6250	(i) is employed at the school; and
6251	(ii) is a qualified adult.
6252	(b) A qualified adult may administer stock albuterol to a student who:
6253	(i) has a diagnosis of asthma by a health care provider;
6254	(ii) has a current asthma action plan on file with the school; and
6255	(iii) is showing symptoms of an asthma emergency as described in the student's
6256	asthma action plan.
6257	(c) This Subsection (6) may not be interpreted to relieve a student's parent or
6258	guardian of providing a student's medication or create an expectation that a school will have
6259	stock albuterol available.
6260	(7) No school, school board, or school official shall retaliate or otherwise take adverse
6261	action against a teacher or other school employee for:
6262	(a) volunteering under Subsection (2);
6263	(b) engaging in conduct described in Subsection (3); or
6264	(c) failing or refusing to become a qualified adult.
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6266	[26-41-104.] <u>26B-4-407.</u> Training in use and storage of epinephrine
6267	auto-injector.

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epinephrine auto-injector, available to any teacher or other school employee who volunteers

make initial and annual refresher training, regarding the storage and emergency use of an

(1) (a) Each primary and secondary school in the state, both public and private, shall

- 6271 to become a qualified adult.
- (b) The training described in Subsection (1)(a) may be provided by the school nurse,
- or other person qualified to provide such training, designated by the school district physician,
- 6274 the medical director of the local health department, or the local emergency medical services
- 6275 director.
- 6276 (2) A person who provides training under Subsection (1) or (6) shall include in the
- 6277 training:

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- 6278 (a) techniques for recognizing symptoms of anaphylaxis;
- 6279 (b) standards and procedures for the storage and emergency use of epinephrine 6280 auto-injectors;
- 6281 (c) emergency follow-up procedures, including calling the emergency 911 number and contacting, if possible, the student's parent and physician; and
 - (d) written materials covering the information required under this Subsection (2).
- 6284 (3) A qualified adult shall retain for reference the written materials prepared in accordance with Subsection (2)(d).
 - (4) A public school shall permit a student to possess an epinephrine auto-injector or possess and self-administer an epinephrine auto-injector if:
 - (a) the student's parent or guardian signs a statement:
- 6289 (i) authorizing the student to possess or possess and self-administer an epinephrine 6290 auto-injector; and
 - (ii) acknowledging that the student is responsible for, and capable of, possessing or possessing and self-administering an epinephrine auto-injector; and
 - (b) the student's health care provider provides a written statement that states that:
 - (i) it is medically appropriate for the student to possess or possess and self-administer an epinephrine auto-injector; and
 - (ii) the student should be in possession of the epinephrine auto-injector at all times.
- (5) The department, in cooperation with the state superintendent of public instruction, shall design forms to be used by public and private schools for the parental and health care providers statements described in Subsection (4).
 - (6) (a) The department:
 - (i) shall approve educational programs conducted by other persons, to train:
- (A) people under Subsection (6)(b) of this section, regarding the proper use and

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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6303	storage of emergency epinephrine auto-injectors; and		
6304	(B) a qualified epinephrine auto-injector entity regarding the proper storage and		
6305	emergency use of epinephrine auto-injectors; and		
6306	(ii) may, as funding is available, conduct educational programs to train people		
6307	regarding the use of and storage of emergency epinephrine auto-injectors.		
6308	(b) A person who volunteers to receive training as a qualified adult to administer an		
6309	epinephrine auto-injector under the provisions of this Subsection (6) shall demonstrate a		
6310	need for the training to the department, which may be based upon occupational, volunteer, or		
6311	family circumstances, and shall include:		
6312	(i) camp counselors;		
6313	(ii) scout leaders;		
6314	(iii) forest rangers;		
6315	(iv) tour guides; and		
6316	(v) other persons who have or reasonably expect to have contact with at least one		
6317	other person as a result of the person's occupational or volunteer status.		
6318			
6319	[26-41-104.1.] <u>26B-4-408.</u> Training in use and storage of stock albuterol.		
6320	(1) (a) Each primary and secondary school in the state, both public and private, shall		
6321	make initial and annual refresher training regarding the storage and emergency use of stock		
6322	albuterol available to a teacher or school employee who volunteers to become a qualified		
6323	adult.		
6324	(b) The training described in Subsection (1)(a) shall be provided by the department.		
6325	(2) A person who provides training under Subsection (1) or (6) shall include in the		
6326	training:		
6327	(a) techniques for recognizing symptoms of an asthma emergency;		
6328	(b) standards and procedures for the storage and emergency use of stock albuterol;		
6329	(c) emergency follow-up procedures, and contacting, if possible, the student's parent;		
6330	and		
6331	(d) written materials covering the information required under this Subsection (2).		
6332	(3) A qualified adult shall retain for reference the written materials prepared in		

accordance with Subsection (2)(d).

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(4) (a) A public or private school shall permit a student to possess and self-administer

6335	asthma medication if:
6336	(i) the student's parent or guardian signs a statement:
6337	(A) authorizing the student to self-administer asthma medication; and
6338	(B) acknowledging that the student is responsible for, and capable of,
6339	self-administering the asthma medication; and
6340	(ii) the student's health care provider provides a written statement that states:
6341	(A) it is medically appropriate for the student to self-administer asthma medication
6342	and be in possession of asthma medication at all times; and
6343	(B) the name of the asthma medication prescribed or authorized for the student's use
6344	(b) Section 53G-8-205 does not apply to the possession and self-administration of
6345	asthma medication in accordance with this section.
6346	(5) The department, in cooperation with the state superintendent of public instruction,
6347	shall design forms to be used by public and private schools for the parental and health care
6348	provider statements described in Subsection (4).
6349	(6) The department:
6350	(a) shall approve educational programs conducted by other persons to train:
6351	(i) people under Subsection (6)(b), regarding the proper use and storage of stock
6352	albuterol; and
6353	(ii) a qualified stock albuterol entity regarding the proper storage and emergency use
6354	of stock albuterol; and
6355	(b) may conduct educational programs to train people regarding the use of and
6356	storage of stock albuterol.
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6358	[26-41-105.] <u>26B-4-409.</u> Authority to obtain and use an epinephrine
6359	auto-injector or stock albuterol.
6360	(1) A qualified adult who is a teacher or other school employee at a public or private
6361	primary or secondary school in the state, or a school nurse, may obtain from the school
6362	district physician, the medical director of the local health department, or the local emergency
6363	medical services director a prescription for:
6364	(a) epinephrine auto-injectors for use in accordance with this chapter; or

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(2) (a) A qualified adult may obtain an epinephrine auto-injector for use in accordance

(b) stock albuterol for use in accordance with this chapter.

6367	with this chapter that is dispensed by:
6368	(i) a pharmacist as provided under Section 58-17b-1004; or
6369	(ii) a pharmacy intern as provided under Section 58-17b-1004.
6370	(b) A qualified adult may obtain stock albuterol for use in accordance with this chapter
6371	that is dispensed by:
6372	(i) a pharmacist as provided under Section 58-17b-1004; or
6373	(ii) a pharmacy intern as provided under Section 58-17b-1004.
6374	(3) A qualified adult:
6375	(a) may immediately administer an epinephrine auto-injector to a person exhibiting
6376	potentially life-threatening symptoms of anaphylaxis when a physician is not immediately
6377	available; and
6378	(b) shall initiate emergency medical services or other appropriate medical follow-up in
6379	accordance with the training materials retained under Section 26-41-104 after administering
6380	an epinephrine auto-injector.
6381	(4) If a school nurse is not immediately available, a qualified adult:
6382	(a) may immediately administer stock albuterol to an individual who:
6383	(i) has a diagnosis of asthma by a health care provider;
6384	(ii) has a current asthma action plan on file with the school; and
6385	(iii) is showing symptoms of an asthma emergency as described in the student's
6386	asthma action plan; and
6387	(b) shall initiate appropriate medical follow-up in accordance with the training
6388	materials retained under Section 26-41-104.1 after administering stock albuterol.
6389	(5) (a) A qualified entity that complies with Subsection (5)(b) or (c), may obtain a
6390	supply of epinephrine auto-injectors or stock albuterol, respectively, from a pharmacist under
6391	Section 58-17b-1004, or a pharmacy intern under Section 58-17b-1004 for:
6392	(i) storing:
6393	(A) the epinephrine auto-injectors on the qualified epinephrine auto-injector entity's
6394	premises; and
6395	(B) stock albuterol on the qualified stock albuterol entity's premises; and
6396	(ii) use by a qualified adult in accordance with Subsection (3) or (4).
6397	(b) A qualified epinephrine auto-injector entity shall:
6398	(i) designate an individual to complete an initial and annual refresher training program

- 6399 regarding the proper storage and emergency use of an epinephrine auto-injector available to 6400 a qualified adult; and
- 6401 (ii) store epinephrine auto-injectors in accordance with the standards established by 6402 the department in Section 26-41-107.
 - (c) A qualified stock albuterol entity shall:
- 6404 (i) designate an individual to complete an initial and annual refresher training program 6405 regarding the proper storage and emergency use of stock albuterol available to a qualified 6406 adult; and
- 6407 (ii) store stock albuterol in accordance with the standards established by the 6408 department in Section 26-41-107.

6410 [26-41-106.] **26B-4-410**. Immunity from liability.

- (1) The following, if acting in good faith, are not liable in any civil or criminal action for any act taken or not taken under the authority of this chapter with respect to an anaphylactic reaction or asthma emergency:
 - (a) a qualified adult;

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- 6415 (b) a physician, pharmacist, or any other person or entity authorized to prescribe or 6416 dispense prescription drugs;
 - (c) a person who conducts training described in Section 26-41-104 or 26-41-104.1;
- 6418 (d) a qualified epinephrine auto-injector entity; and
- 6419 (e) a qualified stock albuterol entity.
- 6420 (2) Section 53G-9-502 does not apply to the administration of an epinephrine auto-injector or stock albuterol in accordance with this chapter.
- 6422 (3) This section does not eliminate, limit, or reduce any other immunity from liability or defense against liability that may be available under state law. 6423

6425 [26-41-107.] <u>26B-4-411.</u> Administrative rulemaking authority.

6426 The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah 6427 Administrative Rulemaking Act, to:

- 6428 (1) establish and approve training programs in accordance with Sections 26-41-104 6429 and 26-41-104.1;
- (2) establish a procedure for determining who is eligible for training as a qualified 6430

adult under Subsection 26-41-104(6)(b)(v); and 6431 6432 (3) establish standards for storage of: (a) emergency auto-injectors by a qualified epinephrine auto-injector entity under 6433 6434 Section 26-41-104; and 6435 (b) stock albuterol by a qualified stock albuterol entity under Section 26-41-104.1. 6436 Part 5. Treatment Access. 6437 6438 [26-64-102.] 26B-4-501. Definitions. 6439 6440 As used in this [chapter] part: (1) "Controlled substance" means the same as that term is defined in Title 58, 6441 Chapter 37, Utah Controlled Substances Act. 6442 (2) "Critical access hospital" means a critical access hospital that meets the criteria of 6443 42 U.S.C. Sec. 1395i-4(c)(2) (1998). 6444 6445 (3) "Designated facility" means: 6446 (a) a freestanding urgent care center; 6447 (b) a general acute hospital; or (c) a critical access hospital. 6448 6449 (4) "Dispense" means the same as that term is defined in Section 58-17b-102. [(2)] (5) "Division" means the Division of Professional Licensing created in Section 6450 58-1-103. 6451 6452 (6) "Emergency contraception" means the use of a substance, approved by the 6453 United States Food and Drug Administration, to prevent pregnancy after sexual intercourse. (7) "Freestanding urgent care center" means the same as that term is defined in 6454 6455 Section 59-12-801. (8) "General acute hospital" means the same as that term is defined in Section 6456 6457 26-21-2. (3) "Local health department" means: 6458 6459 (a) a local health department, as defined in Section 26A-1-102; or (b) a multicounty local health department, as defined in Section 26A-1-102.] 6460 6461 (9) "Health care facility" means a hospital, a hospice inpatient residence, a nursing facility, a dialysis treatment facility, an assisted living residence, an entity that provides home-6462

6463	and community-based services, a hospice or home health care agency, or another facility	
6464	that provides or contracts to provide health care services, which facility is licensed under	
6465	Chapter 21, Health Care Facility Licensing and Inspection Act.	
6466	(10) "Health care provider" means:	
6467	(a) a physician, as defined in Section 58-67-102;	
6468	(b) an advanced practice registered nurse, as defined in Section 58-31b-102;	
6469	(c) a physician assistant, as defined in Section 58-70a-102; or	
6470	(d) an individual licensed to engage in the practice of dentistry, as defined in Section	
6471	<u>58-69-102.</u>	
6472	(11) "Increased risk" means risk exceeding the risk typically experienced by an	
6473	individual who is not using, and is not likely to use, an opiate.	
6474	(12) "Opiate" means the same as that term is defined in Section 58-37-2.	
6475	(13) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug	
6476	that is not a controlled substance and that is approved by the federal Food and Drug	
6477	Administration for the diagnosis or treatment of an opiate-related drug overdose.	
6478	(14) "Opiate-related drug overdose event" means an acute condition, including a	
6479	decreased level of consciousness or respiratory depression resulting from the consumption	
6480	or use of a controlled substance, or another substance with which a controlled substance	
6481	was combined, and that a person would reasonably believe to require medical assistance.	
6482	(15) "Overdose outreach provider" means:	
6483	(a) a law enforcement agency;	
6484	(b) a fire department;	
6485	(c) an emergency medical service provider, as defined in Section 26-8a-102;	
6486	(d) emergency medical service personnel, as defined in Section 26-8a-102;	
6487	(e) an organization providing treatment or recovery services for drug or alcohol use;	
6488	(f) an organization providing support services for an individual, or a family of an	
6489	individual, with a substance use disorder;	
6490	(g) an organization providing substance use or mental health services under contract	
6491	with a local substance abuse authority, as defined in Section 62A-15-102, or a local mental	
6492	health authority, as defined in Section 62A-15-102;	
6493	(h) an organization providing services to the homeless;	
6494	(i) a local health department;	

6495	(j) an individual licensed to practice pharmacy under Title 58, Chapter 17b, Pharmacy		
6496	Practice Act; or		
6497	(k) an individual.		
6498	[(4)] <u>(16)</u> "Patient counseling" means the same as that term is defined in Section		
6499	58-17b-102.		
6500	[(5)] (17) "Pharmacist" means the same as that term is defined in Section		
6501	58-17b-102.		
6502	[(6)] <u>(18)</u> "Pharmacy intern" means the same as that term is defined in Section		
6503	58-17b-102.		
6504	[(7)] <u>(19)</u> "Physician" means the same as that term is defined in Section 58-67-102.		
6505	(20) "Practitioner" means:		
6506	(a) a physician; or		
6507	(b) any other person who is permitted by law to prescribe emergency contraception.		
6508	[(8)] <u>(21)</u> "Prescribe" means the same as that term is defined in Section 58-17b-102.		
6509	[(9)] <u>(22)</u> (a) "Self-administered hormonal contraceptive" means a self-administered		
6510	hormonal contraceptive that is approved by the United States Food and Drug Administration		
6511	to prevent pregnancy.		
6512	(b) "Self-administered hormonal contraceptive" includes an oral hormonal		
6513	contraceptive, a hormonal vaginal ring, and a hormonal contraceptive patch.		
6514	(c) "Self-administered hormonal contraceptive" does not include any drug intended to		
6515	induce an abortion, as that term is defined in Section 76-7-301.		
6516	[(8)] <u>(23)</u> "Sexual assault" means any criminal conduct described in Title 76, Chapter		
6517	5, Part 4, Sexual Offenses, that may result in a pregnancy.		
6518	[(9)] (24) "Victim of sexual assault" means any person who presents to receive, or		
6519	receives, medical care in consequence of being subjected to sexual assault.		
6520			
6521	[26-21b-201.] <u>26B-4-502.</u> Emergency contraception services for a victim of		
6522	sexual assault.		
6523	(1) Except as provided in Subsection (2), a designated facility shall provide the		
6524	following services to a victim of sexual assault:		
6525	(a) provide the victim with written and oral medical information regarding emergency		
6526	contraception that is unbiased, accurate, and generally accepted by the medical community		

6527	as being scientifically valid;
6528	(b) orally inform the victim of sexual assault that the victim may obtain emergency

- 6528 (b) orally inform the victim of sexual assault that the victim may obtain emergency contraception at the designated facility;
 - (c) offer a complete regimen of emergency contraception to a victim of sexual assault;
- 6531 (d) provide, at the designated facility, emergency contraception to the victim of sexual assault upon her request;
 - (e) maintain a protocol, prepared by a physician, for the administration of emergency contraception at the designated facility to a victim of sexual assault; and
 - (f) develop and implement a written policy to ensure that a person is present at the designated facility, or on-call, who:
 - (i) has authority to dispense or prescribe emergency contraception, independently, or under the protocol described in Subsection (1)(e), to a victim of sexual assault; and
 - (ii) is trained to comply with the requirements of this section.
- 6540 (2) A freestanding urgent care center is exempt from the requirements of Subsection 6541 (1) if:
- 6542 (a) there is a general acute hospital or a critical access hospital within 30 miles of the 6543 freestanding urgent care center; and
 - (b) an employee of the freestanding urgent care center provides the victim with:
- (i) written and oral medical information regarding emergency contraception that is
 unbiased, accurate, and generally accepted by the medical community as being scientifically
 valid; and
 - (ii) the name and address of the general acute hospital or critical access hospital described in Subsection (2)(a).
 - (3) A practitioner shall comply with Subsection (4) with regard to a person who is a victim of sexual assault, if the person presents to receive medical care, or receives medical care, from the practitioner at a location that is not a designated facility.
 - (4) A practitioner described in Subsection (3) shall:
 - (a) provide the victim with written and oral medical information regarding emergency contraception that is unbiased, accurate, and generally accepted by the medical community as being scientifically valid; and
- 6557 (b) (i) (A) orally inform the victim of sexual assault that the victim may obtain 6558 emergency contraception at the facility where the practitioner is located; and

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6559	(B) provide emergency contraception to the victim of sexual assault, if she requests
6560	emergency contraception; or
6561	(ii) inform the victim of sexual assault of the nearest location where she may obtain
6562	emergency contraception.
6563	(5) (a) The department may make rules, in accordance with Title 63G, Chapter 3,
6564	Utah Administrative Rulemaking Act, to enforce the provisions of this section.
6565	(b) The department shall, in an expeditious manner, investigate any complaint
6566	received by the department regarding the failure of a health care facility to comply with a
6567	requirement of this section.
6568	(c) If the department finds a violation of this section or any rules adopted under this
6569	section, the department may take one or more of the actions described in Section 26-21-11.
6570	
6571	[26-64-103.] <u>26B-4-503.</u> Voluntary participation.
6572	This [chapter] part does not create a duty or standard of care for a person to
6573	prescribe or dispense a self-administered hormonal contraceptive.
6574	
6575	[26-64-104.] <u>26B-4-504.</u> Authorization to dispense self-administered hormonal
6576	contraceptives.
6577	Notwithstanding Title 58, Chapter 17b, Pharmacy Practice Act, a person licensed
6578	under Title 58, Chapter 17b, Pharmacy Practice Act, to dispense a self-administered
6579	hormonal contraceptive may dispense the self-administered hormonal contraceptive:
6580	(1) to a patient who is 18 years old or older;
6581	(2) pursuant to a standing prescription drug order made in accordance with Section
6582	26-64-105;
6583	(3) without any other prescription drug order from a person licensed to prescribe a
6584	self-administered hormonal contraceptive; and
6585	(4) in accordance with the dispensing guidelines in Section 26-64-106.
6586	
6587	[26-64-105.] <u>26B-4-505.</u> Standing prescription drug orders for a
6588	self-administered hormonal contraceptive.
6589	A physician who is licensed to prescribe a self-administered hormonal contraceptive,
6590	including a physician acting in the physician's capacity as an employee of the department, or

- 6591 a medical director of a local health department, may issue a standing prescription drug order 6592 authorizing the dispensing of the self-administered hormonal contraceptive under Section 26-64-104 in accordance with a protocol that: 6593
 - (1) requires the physician to specify the persons, by professional license number. authorized to dispense the self-administered hormonal contraceptive;
 - (2) requires the physician to review at least annually the dispensing practices of those authorized by the physician to dispense the self-administered hormonal contraceptive;
- (3) requires those authorized by the physician to dispense the self-administered 6598 6599 hormonal contraceptive to make and retain a record of each person to whom the 6600 self-administered hormonal contraceptive is dispensed, including:
 - (a) the name of the person;

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- (b) the drug dispensed; and
- (c) other relevant information; and
- 6604 (4) is approved by the department by administrative rule made in accordance with 6605 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[26-64-106.] 26B-4-506. Guidelines for dispensing a self-administered hormonal contraceptive.

- (1) A pharmacist or pharmacist intern who dispenses a self-administered hormonal contraceptive under this chapter:
- (a) shall obtain a completed self-screening risk assessment questionnaire, that has been approved by the division in collaboration with the Board of Pharmacy and the Physicians Licensing Board, from the patient before dispensing the self-administered hormonal contraceptive;
- (b) if the results of the evaluation in Subsection (1)(a) indicate that it is unsafe to dispense a self-administered hormonal contraceptive to a patient:
 - (i) may not dispense a self-administered hormonal contraceptive to the patient; and
 - (ii) shall refer the patient to a primary care or women's health care practitioner;
- 6619 (c) may not continue to dispense a self-administered hormonal contraceptive to a patient for more than 24 months after the date of the initial prescription without evidence that 6620 the patient has consulted with a primary care or women's health care practitioner during the 6622 preceding 24 months; and

6623	(d) shall provide the patient with:	
6624	(i) written information regarding:	
6625	(A) the importance of seeing the patient's primary care practitioner or women's health	
6626	care practitioner to obtain recommended tests and screening; and	
6627	(B) the effectiveness and availability of long-acting reversible contraceptives as an	
6628	alternative to self-administered hormonal contraceptives; and	
6629	(ii) a copy of the record of the encounter with the patient that includes:	
6630	(A) the patient's completed self-assessment tool; and	
6631	(B) a description of the contraceptives dispensed, or the basis for not dispensing a	
6632	contraceptive.	
6633	(2) If a pharmacist dispenses a self-administered hormonal contraceptive to a patient,	
6634	the pharmacist shall, at a minimum, provide patient counseling to the patient regarding:	
6635	(a) the appropriate administration and storage of the self-administered hormonal	
6636	contraceptive;	
6637	(b) potential side effects and risks of the self-administered hormonal contraceptive;	
6638	(c) the need for backup contraception;	
6639	(d) when to seek emergency medical attention; and	
6640	(e) the risk of contracting a sexually transmitted infection or disease, and ways to	
6641	reduce the risk of contraction.	
6642	(3) The division, in collaboration with the Board of Pharmacy and the Physicians	
6643	Licensing Board, shall make rules in accordance with Title 63G, Chapter 3, Utah	
6644	Administrative Rulemaking Act, establishing the self-screening risk assessment	
6645	questionnaire described in Subsection (1)(a).	
6646		
6647	[26-64-107.] <u>26B-4-507.</u> Limited civil liability.	
6648	A physician who issues a standing prescription drug order in accordance with Section	
6649	26-64-105 is not liable for any civil damages for acts or omissions resulting from the	
6650	dispensing of a self-administered hormonal contraceptive under this chapter.	
6651		
6652	[26-55-103.] <u>26B-4-508.</u> Voluntary participation.	
6653	This chapter does not create a duty or standard of care for a person to prescribe or	
6654	administer an opiate antagonist.	

[26-55-104.] <u>26B-4-509.</u>	Prescribing, dispensing, and administering an opiate
antagonist Immunity from liability.	

- (1) (a) (i) For purposes of Subsection (1)(a)(ii), "a person other than a health care facility or health care provider" includes the following, regardless of whether the person has received funds from the department through the Opiate Overdose Outreach Pilot Program created in Section 26-55-107:
 - (A) a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F); or
- (B) an organization, defined by department rule made under Subsection 26-55-107(7)(e), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event.
- (ii) Except as provided in Subsection (1)(b), the following persons are not liable for any civil damages for acts or omissions made as a result of administering an opiate antagonist when the person acts in good faith to administer the opiate antagonist to an individual whom the person believes to be experiencing an opiate-related drug overdose event:
 - (A) an overdose outreach provider; or
 - (B) a person other than a health care facility or health care provider.
- (b) A health care provider:

- (i) is not immune from liability under Subsection (1)(a) when the health care provider is acting within the scope of the health care provider's responsibilities or duty of care; and
- (ii) is immune from liability under Subsection (1)(a) if the health care provider is under no legal duty to respond and otherwise complies with Subsection (1)(a).
- (2) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, a health care provider who is licensed to prescribe an opiate antagonist may prescribe, including by a standing prescription drug order issued in accordance with Subsection 26-55-105(2), or dispense an opiate antagonist:
- (a) (i) to an individual who is at increased risk of experiencing an opiate-related drug overdose event;
- (ii) for an individual described in Subsection (2)(a)(i), to a family member, friend, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist the individual; or
 - (iii) to an overdose outreach provider for:

- 6687 (A) furnishing the opiate antagonist to an individual described in Subsection (2)(a)(i) 6688 or (ii), as provided in Section 26-55-106; or
 - (B) administering to an individual experiencing an opiate-related drug overdose event;
- (b) without a prescriber-patient relationship; and

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- (c) without liability for any civil damages for acts or omissions made as a result of prescribing or dispensing the opiate antagonist in good faith.
 - (3) A health care provider who dispenses an opiate antagonist to an individual or an overdose outreach provider under Subsection (2)(a) shall provide education to the individual or overdose provider that includes written instruction on how to:
 - (a) recognize an opiate-related drug overdose event; and
 - (b) respond appropriately to an opiate-related drug overdose event, including how to:
 - (i) administer an opiate antagonist; and
- 6699 (ii) ensure that an individual to whom an opiate antagonist has been administered receives, as soon as possible, additional medical care and a medical evaluation.

[26-55-105.] <u>26B-4-510.</u> Standing prescription drug orders for an opiate antagonist.

- (1) Notwithstanding Title 58, Chapter 17b, Pharmacy Practice Act, a person licensed under Title 58, Chapter 17b, Pharmacy Practice Act, to dispense an opiate antagonist may dispense the opiate antagonist:
- (a) pursuant to a standing prescription drug order made in accordance with Subsection (2); and
- (b) without any other prescription drug order from a person licensed to prescribe an opiate antagonist.
- (2) A physician who is licensed to prescribe an opiate antagonist, including a physician acting in the physician's capacity as an employee of the department, or a medical director of a local health department, as defined in Section 26A-1-102, may issue a standing prescription drug order authorizing the dispensing of the opiate antagonist under Subsection (1) in accordance with a protocol that:
 - (a) limits dispensing of the opiate antagonist to:
- 6717 (i) an individual who is at increased risk of experiencing an opiate-related drug overdose event;

6719	(ii) a family member of, friend of, or other person, including a person described in
6720	Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an
6721	individual who is at increased risk of experiencing an opiate-related drug overdose event; or
6722	(iii) an overdose outreach provider for:
6723	(A) furnishing to an individual who is at increased risk of experiencing an
6724	opiate-related drug overdose event, or to a family member of, friend of, or other individual
6725	who is in a position to assist an individual who is at increased risk of experiencing an
6726	opiate-related drug overdose event, as provided in Section 26-55-106; or
6727	(B) administering to an individual experiencing an opiate-related drug overdose event
6728	(b) requires the physician to specify the persons, by professional license number,
6729	authorized to dispense the opiate antagonist;
6730	(c) requires the physician to review at least annually the dispensing practices of those
6731	authorized by the physician to dispense the opiate antagonist;
6732	(d) requires those authorized by the physician to dispense the opiate antagonist to
6733	make and retain a record of each person to whom the opiate antagonist is dispensed, which
6734	shall include:
6735	(i) the name of the person;
6736	(ii) the drug dispensed; and
6737	(iii) other relevant information; and
6738	(e) is approved by the Division of Professional Licensing within the Department of
6739	Commerce by administrative rule made in accordance with Title 63G, Chapter 3, Utah
6740	Administrative Rulemaking Act.
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6742	[26-55-106.] <u>26B-4-511.</u> Overdose outreach providers.
6743	Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502:
6744	(1) an overdose outreach provider may:
6745	(a) obtain an opiate antagonist dispensed on prescription by:
6746	(i) a health care provider, in accordance with Subsections 26-55-104(2) and (3); or
6747	(ii) a pharmacist or pharmacy intern, as otherwise authorized by Title 58, Chapter
6748	17b, Pharmacy Practice Act;
6749	(b) store the opiate antagonist; and
6750	(c) furnish the opiate antagonist:

(i) (A) to an individual who is at increased risk of experiencing an opiate-related drug 6751 6752 overdose event; or (B) to a family member, friend, overdose outreach provider, or other individual who is 6753 6754 in a position to assist an individual who is at increased risk of experiencing an opiate-related 6755 drug overdose event; and (ii) without liability for any civil damages for acts or omissions made as a result of 6756 furnishing the opiate antagonist in good faith; and 6757 6758 (2) when furnishing an opiate antagonist under Subsection (1), an overdose outreach 6759 provider: 6760 (a) shall also furnish to the recipient of the opiate antagonist: (i) the written instruction under Subsection 26-55-104(3) received by the overdose 6761 6762 outreach provider from the health care provider at the time the opiate antagonist was 6763 dispensed to the overdose outreach provider; or 6764 (ii) if the opiate antagonist was dispensed to the overdose outreach provider by a 6765 pharmacist or pharmacy intern, any written patient counseling under Section 58-17b-613 6766 received by the overdose outreach provider at the time of dispensing; and 6767 (b) may provide additional instruction on how to recognize and respond appropriately 6768 to an opiate-related drug overdose event. 6769 6770 [26-55-107.] 26B-4-512. Opiate Overdose Outreach Pilot Program -- Grants --6771 Annual reporting by grantees -- Rulemaking -- Annual reporting by department. 6772 (1) As used in this section: 6773 (a) "Persons that are in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event": 6774 6775 (i) means the following organizations: 6776 (A) a law enforcement agency; 6777 (B) the department or a local health department, as defined in Section 26A-1-102; 6778 (C) an organization that provides drug or alcohol treatment services; 6779 (D) an organization that provides services to the homeless;

(F) a school; or

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antagonist in response to an opiate-related drug overdose event;

(E) an organization that provides training on the proper administration of an opiate

6783	(G) except as provided in Subsection (1)(a)(ii), any other organization, as defined by
6784	department rule made under Subsection (7)(e), that is in a position to assist an individual
6785	who is at increased risk of experiencing an opiate-related drug overdose event; and
6786	(ii) does not mean:
6787	(A) a person licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
6788	(B) a health care facility; or
6789	(C) an individual.
6790	(b) "School" means:
6791	(i) a public school:
6792	(A) for elementary or secondary education, including a charter school; or
6793	(B) for other purposes;
6794	(ii) a private school:
6795	(A) for elementary or secondary education; or
6796	(B) accredited for other purposes, including higher education or specialty training; or
6797	(iii) an institution within the state system of higher education, as described in Section
6798	53B-1-102.
6799	(2) There is created within the department the "Opiate Overdose Outreach Pilot
6800	Program."
6801	(3) The department may use funds appropriated for the program to:
6802	(a) provide grants under Subsection (4);
6803	(b) promote public awareness of the signs, symptoms, and risks of opioid misuse and
6804	overdose;
6805	(c) increase the availability of educational materials and other resources designed to
6806	assist individuals at increased risk of opioid overdose, their families, and others in a position
6807	to help prevent or respond to an overdose event;
6808	(d) increase public awareness of, access to, and use of opiate antagonist;
6809	(e) update the department's Utah Clinical Guidelines on Prescribing Opioids and
6810	promote its use by prescribers and dispensers of opioids;
6811	(f) develop a directory of substance misuse treatment programs and promote its
6812	dissemination to and use by opioid prescribers, dispensers, and others in a position to assist

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(g) coordinate a multi-agency coalition to address opioid misuse and overdose; and

individuals at increased risk of opioid overdose;

- Working Draft -- For Discussion Purposes Only 6815 (h) maintain department data collection efforts designed to guide the development of 6816 opioid overdose interventions and track their effectiveness. (4) No later than September 1, 2016, and with available funding, the department shall 6817 grant funds through the program to persons that are in a position to assist an individual who 6818 6819 is at increased risk of experiencing an opiate-related drug overdose event. 6820 (5) Funds granted by the program: 6821 (a) may be used by a grantee to: 6822 (i) pay for the purchase by the grantee of an opiate antagonist; or 6823 (ii) pay for the grantee's cost of providing training on the proper administration of an 6824 opiate antagonist in response to an opiate-related drug overdose event; and 6825 (b) may not be used: 6826 (i) to pay for costs associated with the storage or dispensing of an opiate antagonist: 6827 or 6828 (ii) for any other purposes. (6) Grantees shall report annually to the department on the use of granted funds in 6829 6830 accordance with department rules made under Subsection (7)(d). 6831 (7) No later than July 1, 2016, the department shall, in accordance with Title 63G, 6832 Chapter 3, Utah Administrative Rulemaking Act, make rules specifying: 6833 (a) how to apply for a grant from the program; 6834 (b) the criteria used by the department to determine whether a grant request is 6835 approved, including criteria providing that:
 - (i) grants are awarded to areas of the state, including rural areas, that would benefit most from the grant; and
 - (ii) no more than 15% of the total amount granted by the program is used to pay for grantees' costs of providing training on the proper administration of an opiate antagonist in response to an opiate-related drug overdose event;
 - (c) the criteria used by the department to determine the amount of a grant;
 - (d) the information a grantee shall report annually to the department under Subsection (6), including:
- 6844 (i) the amount of opiate antagonist purchased and dispensed by the grantee during 6845 the reporting period;
 - (ii) the number of individuals to whom the opiate antagonist was dispensed by the

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6847	grantee;
6848	(iii) the number of lives known to have been saved during the reporting period as a
6849	result of opiate antagonist dispensed by the grantee; and
6850	(iv) the manner in which the grantee shall record, preserve, and make available for
6851	audit by the department the information described in Subsections (7)(d)(i) through (7)(d)(iii);
6852	and
6853	(e) as required by Subsection (1)(a)(i)(G), any other organization that is in a position
6854	to assist an individual who is at increased risk of experiencing an opiate-related drug
6855	overdose event.
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6857	[26-55-108.] <u>26B-4-513.</u> Coprescription guidelines.
6858	(1) As used in this section:
6859	(a) "Controlled substance prescriber" means the same as that term is defined in
6860	Section 58-37-6.5.
6861	(b) "Coprescribe" means to issue a prescription for an opiate antagonist with a
6862	prescription for an opiate.
6863	(2) The department shall, in consultation with the Physicians Licensing Board created
6864	in Section 58-67-201, the Osteopathic Physician and Surgeon's Licensing Board created in
6865	Section 58-68-201, and the Division of Professional Licensing created in Section 58-1-103,
6866	establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
6867	Rulemaking Act, scientifically based guidelines for controlled substance prescribers to
6868	coprescribe an opiate antagonist to a patient.
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6870	[26-55-109.] <u>26B-4-514.</u> Opiate abuse prevention pamphlet.
6871	(1) As funding is available, the department shall produce and distribute, in conjunction
6872	with the Division of Substance Abuse and Mental Health, a pamphlet about opiates that
6873	includes information regarding:
6874	(a) the risk of dependency and addiction;
6875	(b) methods for proper storage and disposal;
6876	(c) alternative options for pain management;
6877	(d) the benefits of and ways to obtain naloxone; and
6878	(e) resources if the patient believes that the patient has a substance abuse disorder.

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6879	(2) The pamphlet described in Subsection (1) shall be:
6880	(a) evaluated periodically for effectiveness at conveying necessary information and
6881	revised accordingly;
6882	(b) written in simple and understandable language; and
6883	(c) available in English and other languages that the department determines to be
6884	appropriate and necessary.
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6886	Part 6. Adult Autism Treatment Program.
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6888	[26-67-102.] <u>26B-4-601.</u> Definitions.
6889	As used in this [chapter] <u>part</u> :
6890	(1) "Adult Autism Treatment Account" means the Adult Autism Treatment Account
6891	created in Section 26-67-205.
6892	(2) "Advisory committee" means the Adult Autism Treatment Program Advisory
6893	Committee created in Section 26B-1-204.
6894	(3) "Applied behavior analysis" means the same as that term is defined in Section
6895	31A-22-642.
6896	(4) "Autism spectrum disorder" means the same as that term is defined in Section
6897	31A-22-642.
6898	(5) "Program" means the Adult Autism Treatment Program created in Section
6899	26-67-201.
6900	(6) "Qualified individual" means an individual who:
6901	(a) is at least 22 years old;
6902	(b) is a resident of the state;
6903	(c) has been diagnosed by a qualified professional as having:
6904	(i) an autism spectrum disorder; or
6905	(ii) another neurodevelopmental disorder requiring significant supports through
6906	treatment using applied behavior analysis; and
6907	(d) needs significant supports for a condition described in Subsection (6)(c), as
6908	demonstrated by formal assessments of the individual's:
6909	(i) cognitive ability;
6910	(ii) adaptive ability;

6911	(III) behavior; and
6912	(iv) communication ability.
6913	(7) "Qualified provider" means a provider that is qualified under Section 26-67-202 to
6914	provide services for the program.
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6916	[26-67-201.] <u>26B-4-602.</u> Adult Autism Treatment Program Creation
6917	Requirements Reporting.
6918	(1) There is created within the department the Adult Autism Treatment Program.
6919	(2) (a) The program shall be administered by the department in collaboration with the
6920	advisory committee.
6921	(b) The program shall be funded only with money from the Adult Autism Treatment
6922	Account.
6923	(3) (a) An individual may apply for a grant from the program by submitting to a
6924	qualified provider the information specified by the department under Subsection
6925	26-67-204(5).
6926	(b) As funding permits, the department shall award a grant from the program on
6927	behalf of an applicant in accordance with criteria established by the department, in
6928	collaboration with the advisory committee, by rule made in accordance with Title 63G,
6929	Chapter 3, Utah Administrative Rulemaking Act.
6930	(c) A grant shall:
6931	(i) be for a specific amount;
6932	(ii) cover a specific period, not to exceed five years; and
6933	(iii) be disbursed incrementally, if appropriate.
6934	(d) The department shall transmit a grant awarded on behalf of an applicant to a
6935	qualified provider designated by the applicant.
6936	(4) A qualified provider that receives a grant for the treatment of a qualified individual
6937	shall:
6938	(a) use the grant only for treatment of the qualified individual;
6939	(b) submit any reports that are required by the department; and
6940	(c) notify the department within seven days if:
6941	(i) the qualified individual:
6942	(A) has not received treatment from the qualified provider for 10 consecutive days;

6943	(B) is no longer receiving treatment from the qualified provider; or
6944	(C) is no longer a qualified individual; or
6945	(ii) the qualified provider is no longer a qualified provider.
6946	(5) A qualified provider that receives a grant for the treatment of a qualified individual
6947	shall refund any amount to the department on a prorated basis for each day that:
6948	(a) the qualified provider is no longer a qualified provider;
6949	(b) the individual is no longer a qualified individual; or
6950	(c) the qualified provider does not provide services to a qualified individual.
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6952	[26-67-203.] <u>26B-4-603.</u> Provider qualifications.
6953	The department shall designate a provider as a qualified provider if the provider:
6954	(1) is able to treat a qualified individual's condition through:
6955	(a) one or more evidence-based treatments, including applied behavior analysis;
6956	(b) individualized, client-centered treatment;
6957	(c) any method that engages the qualified individual's family members in the
6958	treatment process; and
6959	(d) measured development of the qualified individual's pre-vocational, vocational, and
6960	daily-living skills; and
6961	(2) provides treatment to a qualified individual through:
6962	(a) a behavior analyst licensed under Title 58, Chapter 61, Part 7, Behavior Analyst
6963	Licensing Act; or
6964	(b) a psychologist who is licensed under Title 58, Chapter 61, Psychologist Licensing
6965	Act.
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6967	[26-67-204.] <u>26B-4-604.</u> Department rulemaking.
6968	The department, in collaboration with the advisory committee, shall make rules in
6969	accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
6970	(1) specify assessment tools and outcomes that a qualified provider may use to
6971	determine the types of supports that a qualified individual needs;
6972	(2) define evidence-based treatments that a qualified individual may pay for with grant
6973	funding;
6974	(3) establish criteria for awarding a grant under this chapter;

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6975	(4) specify the information that an individual shall submit to demonstrate that the
6976	individual is a qualified individual;
6977	(5) specify the information a provider shall submit to demonstrate that the provider is
6978	a qualified provider; and
6979	(6) specify the content and timing of reports required from a qualified provider,
6980	including a report on actual and projected treatment outcomes for a qualified individual.
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6982	Part 7. Health Care Workforce.
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6984	[26-46a-102.] <u>26B-4-701.</u> Definitions.
6985	As used in this [chapter] <u>part</u> :
6986	(1) "Accredited clinical education program" means a clinical education program for a
6987	health care profession that is accredited by the Accreditation Council on Graduate Medical
6988	Education.
6989	(2) "Accredited clinical training program" means a clinical training program that is
6990	accredited by an entity recognized within medical education circles as an accrediting body for
6991	medical education, advanced practice nursing education, physician assistance education,
6992	doctor of pharmacy education, dental education, or registered nursing education.
6993	(3) "Centers for Medicare and Medicaid Services" means the Centers for Medicare
6994	and Medicaid Services within the United States Department of Health and Human Services.
6995	(4) "Health care professionals in training" means medical students and residents,
6996	advance practice nursing students, physician assistant students, doctor of pharmacy
6997	students, dental students, and registered nursing students.
6998	[(1)] <u>(5)</u> "Hospital" means a general acute hospital, as defined in Title 26, Chapter
6999	21, Health Care Facility Licensing and Inspection Act.
7000	[(2)] <u>(6)</u> "Physician" means a person:
7001	(a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
7002	(b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
7003	Practice Act.
7004	[(3)] <u>(7)</u> "Rural county" means a county with a population of less than 50,000, as

determined by:

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(a) the most recent official census or census estimate of the United States Bureau of

7007 the Census; or 7008 (b) the most recent population estimate for the county from the Utah Population 7009 Committee, if a population figure for the county is not available under Subsection (3)(a). 7010 [(4)] (8) "Rural hospital" means a hospital located within a rural county. 7011 (9) "UMEC" means the Utah Medical Education Council created in Section 26-69-402. 7012 7013 [26-46-102.] 26B-4-702. Creation of [program] Utah Health Care Workforce 7014 Financial Assistance Program -- Duties of department. 7015 (1) As used in this section: 7016 (a) "Eligible professional" means a geriatric professional or a health care professional 7017 who is eligible to participate in the program. 7018 (b) "Geriatric professional" means a person who: 7019 (i) is a licensed: 7020 (A) health care professional; 7021 (B) social worker; 7022 (C) occupational therapist; 7023 (D) pharmacist; 7024 (E) physical therapist; or 7025 (F) psychologist; and (ii) is determined by the department to have adequate advanced training in geriatrics 7026 7027 to prepare the person to provide specialized geriatric care within the scope of the person's 7028 profession. (b) "Health care professional" means: 7029 7030 (i) a licensed: 7031 (A) physician; (B) physician assistant; 7032 7033 (C) nurse; 7034 (D) dentist; or 7035 (E) mental health therapist; or (ii) another licensed health care professional designated by the department by rule. 7036 7037 (d) "Program" means the Utah Health Care Workforce Financial Assistance Program created in this section. 7038

7039	(e) "Underserved area" means an area designated by the department as underserved
7040	by health care professionals, based upon the results of a needs assessment developed by
7041	the department in consultation with the Utah Health Care Workforce Financial Assistance
7042	Program Advisory Committee created under Section 26-46-103.
7043	[(1)] (2) There is created within the department the Utah Health Care Workforce
7044	Financial Assistance Program to provide, within funding appropriated by the Legislature for
7045	the following purposes:
7046	(a) professional education scholarships and loan repayment assistance to health care
7047	professionals who locate or continue to practice in underserved areas; and
7048	(b) loan repayment assistance to geriatric professionals who locate or continue to
7049	practice in underserved areas.
7050	[(2)] (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
7051	Act, the department shall make rules governing the administration of the program, including
7052	rules that address:
7053	(a) application procedures;
7054	(b) eligibility criteria;
7055	(c) selection criteria;
7056	(d) service conditions, which at a minimum shall include professional service in an
7057	underserved area for a minimum period of time by any person receiving a scholarship or loan
7058	repayment assistance;
7059	(e) penalties for failure to comply with service conditions or other terms of a
7060	scholarship or loan repayment contract;
7061	(f) criteria for modifying or waiving service conditions or penalties in case of extreme
7062	hardship or other good cause; and
7063	(g) administration of contracts entered into before the effective date of this act,
7064	between the department and scholarship or loan repayment recipients, as authorized by law.
7065	[(3)] (4) The department may provide education loan repayment assistance to an
7066	eligible professional if the eligible professional:

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professional that the health care facility will provide education loan repayment assistance to

(b) submits a written commitment from the health care facility employing the eligible

(a) agrees to practice in an underserved area for the duration of the eligible

professional's participation in the program; and

- the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.
- 7073 [(4)] (5) The department shall seek and consider the recommendations of the Utah 7074 Health Care Workforce Financial Assistance Program Advisory Committee created under 7075 Section 26-46-103 as it develops and modifies rules to administer the program.
- 7076 [(5)] [6] Funding for the program:

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- (a) shall be a line item within the appropriations act;
 - (b) shall be nonlapsing unless designated otherwise by the Legislature; and
- (c) may be used to cover administrative costs of the program, including
 reimbursement expenses of the Utah Health Care Workforce Financial Assistance Program
 Advisory Committee created under Section 26-46-103.
- 7082 [(6)] (7) Refunds for loan repayment assistance, penalties for breach of contract, and other payments to the program are dedicated credits to the program.
- 7084 [(7)] (8) The department shall prepare an annual report on the revenues, expenditures, and outcomes of the program.

[26-46a-103.] <u>26B-4-703.</u> Rural Physician Loan Repayment Program -- Purpose -- Repayment limit -- Funding -- Reporting -- Rulemaking -- Advisory committee.

- (1) There is created within the department the Rural Physician Loan Repayment Program to provide, within funding appropriated by the Legislature for this purpose, education loan repayment assistance to physicians in accordance with Subsection (2).
- 7092 (2) The department may enter into an education loan repayment assistance contract 7093 with a physician if:
 - (a) the physician:
 - (i) locates or continues to practice in a rural county; and
- 7096 (ii) has a written commitment from a rural hospital that the hospital will provide education loan repayment assistance to the physician;
- 7098 (b) the assistance provided by the program does not exceed the assistance provided by the rural hospital; and
- 7100 (c) the physician is otherwise eligible for assistance under administrative rules 7101 adopted under Subsection (6).
- 7102 (3) Funding for the program:

7103	(a) shall be a line item within an appropriations act;
7104	(b) may be used to pay for the per diem and travel expenses of the Rural Physician
7105	Loan Repayment Program Advisory Committee under Subsection 26-46a-104(5); and
7106	(c) may be used to pay for department expenses incurred in the administration of the
7107	program:
7108	(i) including administrative support provided to the Rural Physician Loan Repayment
7109	Program Advisory Committee created under Subsection 26-46a-104(7); and
7110	(ii) in an amount not exceeding 10% of funding for the program.
7111	(4) Refunds of loan repayment assistance, penalties for breach of contract, and other
7112	payments to the program are dedicated credits to the program.
7113	(5) The department shall prepare an annual report of the program's revenues,
7114	expenditures, and outcomes.
7115	(6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
7116	the department shall make rules governing the administration of the program, including rules
7117	that address:
7118	(i) application procedures;
7119	(ii) eligibility criteria;
7120	(iii) verification of the amount provided by a rural hospital to a physician for repayment
7121	of the physician's education loans;
7122	(iv) service conditions, which at a minimum shall include professional service by the
7123	physician in the rural hospital providing loan repayment assistance to the physician;
7124	(v) selection criteria and assistance amounts;
7125	(vi) penalties for failure to comply with service conditions or other terms of a loan
7126	repayment assistance contract; and
7127	(vii) criteria for modifying or waiving service conditions or penalties in the case of
7128	extreme hardship or for other good cause.
7129	(b) The department shall seek and consider the recommendations of the Rural
7130	Physician Loan Repayment Program Advisory Committee created under Section 26-46a-104
7131	as it develops and modifies rules to administer the program.
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7133	[26-60-103.] <u>26B-4-704.</u> Scope of telehealth practice <u> Enforcement</u> .

(1) As used in this section:

7135	(a) "Asynchronous store and forward transfer" means the transmission of a patient's
7136	health care information from an originating site to a provider at a distant site.
7137	(b) "Distant site" means the physical location of a provider delivering telemedicine
7138	services.
7139	(c) "Originating site" means the physical location of a patient receiving telemedicine
7140	services.
7141	(d) "Patient" means an individual seeking telemedicine services.
7142	(e) (i) "Patient-generated medical history" means medical data about a patient that
7143	the patient creates, records, or gathers.
7144	(ii) "Patient-generated medical history" does not include a patient's medical record
7145	that a healthcare professional creates and the patient personally delivers to a different
7146	healthcare professional.
7147	(f) "Provider" means an individual who is:
7148	(i) licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection
7149	Act;
7150	(ii) licensed under Title 58, Occupations and Professions, to provide health care; or
7151	(iii) licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.
7152	(g) "Synchronous interaction" means real-time communication through interactive
7153	technology that enables a provider at a distant site and a patient at an originating site to
7154	interact simultaneously through two-way audio and video transmission.
7155	(h) "Telehealth services" means the transmission of health-related services or
7156	information through the use of electronic communication or information technology.
7157	(i) "Telemedicine services" means telehealth services:
7158	(i) including:
7159	(A) clinical care;
7160	(B) health education;
7161	(C) health administration;
7162	(D) home health;
7163	(E) facilitation of self-managed care and caregiver support; or
7164	(F) remote patient monitoring occurring incidentally to general supervision; and
7165	(ii) provided by a provider to a patient through a method of communication that:
7166	(A) uses asynchronous store and forward transfer or synchronous interaction; and

7167	(B) meets industry security and privacy standards, including compliance with the
7168	federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110
7169	Stat. 1936, as amended, and the federal Health Information Technology for Economic and
7170	Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as am ended.

- (1) A provider offering telehealth services shall:
- 7172 (a) at all times:

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- 7173 (i) act within the scope of the provider's license under Title 58, Occupations and 7174 Professions, in accordance with the provisions of this chapter and all other applicable laws 7175 and rules; and
- 7176 (ii) be held to the same standards of practice as those applicable in traditional health 7177 care settings;
 - (b) if the provider does not already have a provider-patient relationship with the patient, establish a provider-patient relationship during the patient encounter in a manner consistent with the standards of practice, determined by the Division of Professional Licensing in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including providing the provider's licensure and credentials to the patient;
 - (c) before providing treatment or prescribing a prescription drug, establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment after:
- 7185 (i) obtaining from the patient or another provider the patient's relevant clinical history; 7186 and
 - (ii) documenting the patient's relevant clinical history and current symptoms;
 - (d) be available to a patient who receives telehealth services from the provider for subsequent care related to the initial telemedicine services, in accordance with community standards of practice;
 - (e) be familiar with available medical resources, including emergency resources near the originating site, in order to make appropriate patient referrals when medically indicated;
 - (f) in accordance with any applicable state and federal laws, rules, and regulations, generate, maintain, and make available to each patient receiving telehealth services the patient's medical records; and
- 7196 (g) if the patient has a designated health care provider who is not the telemedicine 7197 provider:
 - (i) consult with the patient regarding whether to provide the patient's designated

health care provider a medical record or other report containing an explanation of the treatment provided to the patient and the telemedicine provider's evaluation, analysis, or diagnosis of the patient's condition;

- 7202 (ii) collect from the patient the contact information of the patient's designated health 7203 care provider; and
 - (iii) within two weeks after the day on which the telemedicine provider provides services to the patient, and to the extent allowed under HIPAA as that term is defined in Section 26-18-17, provide the medical record or report to the patient's designated health care provider, unless the patient indicates that the patient does not want the telemedicine provider to send the medical record or report to the patient's designated health care provider.
 - (2) Subsection (1)(g) does not apply to prescriptions for eyeglasses or contacts.
- 7210 (3) Except as specifically provided in Title 58, Chapter 83, Online Prescribing,
 7211 Dispensing, and Facilitation Licensing Act, and unless a provider has established a
 7212 provider-patient relationship with a patient, a provider offering telemedicine services may not
 7213 diagnose a patient, provide treatment, or prescribe a prescription drug based solely on one of
 7214 the following:
- 7215 (a) an online questionnaire;
 - (b) an email message; or
 - (c) a patient-generated medical history.
 - (4) A provider may not offer telehealth services if:
- 7219 (a) the provider is not in compliance with applicable laws, rules, and regulations 7220 regarding the provider's licensed practice; or
- 7221 (b) the provider's license under Title 58, Occupations and Professions, is not active 7222 and in good standing.
- (5) (a) The Division of Professional Licensing created in Section 58-1-103 is
 authorized to enforce the provisions of Section 26-60-103 as it relates to providers licensed
 under Title 58, Occupations and Professions.
 - (b) The department is authorized to enforce the provisions of:
- 7227 (i) Section 26-60-103 as it relates to providers licensed under this title; and
- 7228 (ii) Section 26-60-103 as it relates to providers licensed under Title 62A, Chapter 2, 7229 Licensure of Programs and Facilities.

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	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
7231	[26-69-301.] <u>26B-4-705.</u> Utah Health Workforce Information Center.
7232	(1) As used in this section:
7233	(a) "Council" means the Utah Health Workforce Advisory Council created in Section
7234	<u>26-69-201.</u>
7235	(b) "Health sector" means any place of employment where the primary function is the
7236	delivery of health care services.
7237	(c) (i) "Health workforce" means the individuals, collectively and by profession, who
7238	deliver health care services or assist in the delivery of health care services.
7239	(ii) "Health workforce" includes any health care professional who does not work in the
7240	health sector and any non-health care professional who works in the health sector.
7241	[(1)] (2) There is created within the department the Utah Health Workforce
7242	Information Center.
7243	[(2)] <u>(3)</u> The information center shall:
7244	(a) under the guidance of the council, work with the Department of Commerce to
7245	collect data described in Section 58-1-112;
7246	(b) analyze data from any available source regarding Utah's health workforce
7247	including data collected by the Department of Commerce under Section 58-1-112;
7248	(c) send a report to the council regarding any analysis of health workforce data;
7249	(d) conduct research on Utah's health workforce as directed by the council;
7250	(e) notwithstanding the provisions of Subsection 35A-4-312(3), receive information
7251	obtained by the Department of Workforce Services under the provisions of Section
7252	35A-4-312 for purposes consistent with the information center's duties, including identifying
7253	changes in Utah's health workforce numbers, types, and geographic distribution;
7254	(f) project the demand for individuals to enter health care professions, including the
7255	nursing profession in accordance with Section 53B-26-202;
7256	(g) subject to Section 26-3-7, share data with any appropriate person as determined
7257	by the information center; and
7258	(h) conduct research and provide analysis for any state agency as approved by the
7259	executive director or the executive director's designee.
7260	[(3)] (4) Notwithstanding any other provision of state law, the information center is

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authorized to obtain data from any state agency if:

(a) the council and the information center deem receiving the data necessary to

perform a duty listed under Subsection [(2)] (3) or 26-69-202(1); and 7263 7264 (b) the information center's access to the data will not: (i) violate any federal statute or federal regulation; or 7265 7266 (ii) violate a condition a state agency must follow: 7267 (A) to participate in a federal program; or 7268 (B) to receive federal funds. 7269 [26-69-402.] 26B-4-706. Utah Medical Education Council. 7270 7271 (1) (a) There is created the Utah Medical Education Council, which is a subcommittee 7272 of the Utah Health Workforce Advisory Council. 7273 (b) The membership of UMEC shall consist of the following appointed by the 7274 governor: 7275 (i) the dean of the school of medicine at the University of Utah; 7276 (ii) an individual who represents graduate medical education at the University of Utah; (iii) an individual from each institution, other than the University of Utah, that sponsors 7277 7278 an accredited clinical education program: 7279 (iv) an individual from the health care insurance industry; and 7280 (v) (A) three members of the general public who are not employed by or affiliated with 7281 any institution that offers, sponsors, or finances health care or medical education; and 7282 (B) if the number of individuals appointed under Subsection (1)(b)(iii) is more than 7283 two, the governor may appoint an additional member of the public under this Subsection 7284 (1)(b)(v) for each individual the governor appoints under Subsection (1)(b)(iii) beyond two. 7285 (2) Except as provided in Subsections (1)(b)(i) and (ii), no two council members may 7286 be employed by or affiliated with the same: 7287 (a) institution of higher education; 7288 (b) state agency outside of higher education; or 7289 (c) private entity. (3) The dean of the school of medicine at the University of Utah: 7290 7291 (a) shall chair UMEC; 7292 (b) may not be counted in determining the existence of a quorum; and

members results in a tied vote.

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(c) may only cast a vote on a matter before the council if the vote of the other council

- 7295 (4) UMEC shall annually elect a vice chair from UMEC's members.
- 7296 (5) (a) Consistent with Subsection (6)(b), a majority of the members constitute a quorum.
- 7298 (b) The action of a majority of a quorum is the action of UMEC.
- 7299 (6) (a) Except as provided in Subsection (6)(b), members are appointed to four-year 7300 terms of office.
- 7301 (b) Notwithstanding Subsection (6)(a), the governor shall, at the time of the initial appointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the members are appointed every two years.
- (c) If a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term in the same manner as the original appointment was made.
- 7307 (7) A member may not receive compensation or benefits for the member's service, 7308 but may receive per diem and travel expenses in accordance with:
- 7309 (a) Section 63A-3-106;

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- (b) Section 63A-3-107; and
- 7311 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 7312 63A-3-107.
- 7313 (8) The council shall provide staff for UMEC.
- 7315 [26-69-403.] 26B-4-707. Medical Education Program.
- 7316 (1) There is created a Medical Education Program to be administered by UMEC in cooperation with the Division of Finance.
- 7318 (2) The program shall be funded from money received for graduate medical education from:
- 7320 (a) the federal Centers for Medicare and Medicaid Services or other federal agency;
- 7321 (b) state appropriations; and
- 7322 (c) donation or private contributions.
- 7323 (3) All funding for this program shall be nonlapsing.
- 7324 (4) Program money may only be expended if:
- 7325 (a) approved by UMEC; and
- (b) used for graduate medical education in accordance with Subsection 26-69-404(4).

7327	[26-69-404.] <u>26B-4-708.</u> Duties of UMEC.
7328	UMEC shall:
7329	(1) seek private and public contributions for the program;
7330	(2) determine the method for reimbursing institutions that sponsor health care
7331	professionals in training;
7332	(3) determine the number and type of positions for health care professionals in
7333	training for which program money may be used;
7334	(4) distribute program money for graduate medical education in a manner that:
7335	(a) prepares postgraduate medical residents, as defined by the accreditation council
7336	on graduate medical education, for inpatient, outpatient, hospital, community, and
7337	geographically diverse settings;
7338	(b) encourages the coordination of interdisciplinary clinical training among health care
7339	professionals in training;
7340	(c) promotes stable funding for the clinical training of health care professionals in
7341	training; and
7342	(d) only funds accredited clinical training programs; and
7343	(5) advise on the implementation of the program.
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7345	[26-69-405.] <u>26B-4-709.</u> Powers of UMEC.
7346	The UMEC may:
7347	(1) appoint advisory committees of broad representation on interdisciplinary clinical
7348	education, workforce mix planning and projections, funding mechanisms, and other topics as
7349	is necessary;
7350	(2) use federal money for necessary administrative expenses to carry out UMEC's
7351	duties and powers as permitted by federal law;
7352	(3) distribute program money in accordance with Subsection 26-69-404(4); and
7353	(4) as is necessary to carry out UMEC's duties under Section 26-69-404, adopt rules
7354	in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
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7356	[26-69-406.] <u>26B-4-710.</u> Rural residency training program.
7357	(1) As used in this section:
7358	(a) "Physician" means:

- 7359 (i) an individual licensed to practice medicine under Title 58, Chapter 67, Utah Medical Practice Act or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and
- 7361 (ii) an individual licensed to practice dentistry under Title 58, Chapter 69, Dentist and 7362 Dental Hygienist Practice Act.
 - (b) "Rural residency training program" means an accredited clinical training program that places a physician into a rural county for a part or all of the physician's clinical training.
- 7365 (2) Subject to appropriations from the Legislature, UMEC shall establish a pilot program to place physicians into rural residency training programs.

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[26-69-407.] <u>26B-4-711.</u> Residency grant program.

- 7369 (1) As used in this section:
- (a) "D.O. program" means an osteopathic medical program that prepares a graduate to obtain licensure as a doctor of osteopathic medicine upon completing a state's licensing requirements.
 - (b) "M.D. program" means a medical education program that prepares a graduate to obtain licensure as a doctor of medicine upon completing a state's licensing requirements.
- 7375 (c) "Residency program" means a program that provides training for graduates of a 7376 D.O. program or an M.D. program.
 - (2) UMEC shall develop a grant program where a sponsoring institution in Utah may apply for a grant to establish a new residency program or expand a current residency program.
- 7380 (3) An applicant for a grant shall:
 - (a) provide the proposed specialty area for each grant funded residency position;
 - (b) identify where the grant funded residency position will provide care;
- 7383 (c) (i) provide proof that the residency program is accredited by the Accreditation 7384 Council for Graduate Medical Education; or
 - (ii) identify what actions need to occur for the proposed residency program to become accredited by the Accreditation Council for Graduate Medical Education;
 - (d) identify how a grant funded residency position will be funded once the residency program exhausts the grant money;
- 7389 (e) agree to implement selection processes for a residency position that treat applicants from D.O. programs and applicants from M.D. programs equally;

- 7391 (f) agree to provide information identified by UMEC that relates to post-residency 7392 employment outcomes for individuals who work in grant funded residency positions; and 7393 (g) provide any other information related to the grant application UMEC deems 7394 necessary. 7395 (4) UMEC shall prioritize awarding grants to new or existing residency programs that will: 7396 (a) address a workforce shortage, occurring in Utah, for a specialty; or 7397 7398 (b) serve an underserved population, including a rural population. 7399 (5) Before November 1, 2023, and each November 1 thereafter, UMEC shall provide 7400 a written report to the Higher Education Appropriations Subcommittee describing: (a) which sponsoring institutions received a grant; 7401 7402 (b) the number of residency positions created; and (c) for each residency position created: 7403 7404 (i) the type of specialty; 7405 (ii) where the residency position provides care; and 7406 (iii) an estimated date of when a grant funded residency position will no longer need 7407 grant funding. 7408 [26-69-408.] 26B-4-712. Forensic psychiatrist fellowship grant. 7409 7410 (1) As used in this section, "forensic psychiatry" means the provision of services by an 7411 individual who: 7412 (a) is a licensed physician; (b) is board certified for a psychiatry specialization recognized by the American Board 7413 7414 of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic 7415 Specialists: and 7416 (c) uses scientific and clinical expertise in legal contexts involving the mental health of
- 7417 individuals.
 - (2) UMEC shall establish a grant program that will facilitate the creation of a single forensic psychiatrist fellowship program.
 - (3) An applicant for the grant shall:
- 7421 (a) demonstrate how the applicant is best suited for developing a forensic psychiatry 7422 fellowship program, including:

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7423	(i) a description of resources that would be available to the program; and
7424	(ii) any resources or staff that need to be acquired for the program;
7425	(b) identify what needs to occur for the proposed residency program to become
7426	accredited by the Accreditation Council for Graduate Medical Education;
7427	(c) provide an estimate of how many individuals would be trained in the program at
7428	any one time;
7429	(d) provide any information related to the grant application UMEC deems necessary
7430	for awarding the grant; and
7431	(e) if awarded the grant, agree to:
7432	(i) enter into a contract with the Department of Corrections that the applicant will
7433	provide for the provision of forensic psychiatry services to an individual:
7434	(A) who needs psychiatric services; and
7435	(B) is under the Department of Corrections' jurisdiction;
7436	(ii) ensure that any individual hired to provide forensic psychiatry services will comply
7437	with all relevant:
7438	(A) national licensing requirements; and
7439	(B) state licensing requirements under Title 58, Occupations and Professions.
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7441	Part 8. Uniform Emergency Volunteer Health Practitioners Act.
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7443	[26-49-102.] <u>26B-4-801.</u> Definitions.
7444	As used in this [chapter] <u>part</u> :
7445	(1) "Disaster relief organization" means an entity that:
7446	(a) provides emergency or disaster relief services that include health or veterinary
7447	services provided by volunteer health practitioners;
7448	(b) is designated or recognized as a provider of the services described in Subsection
7449	(1)(a) under a disaster response and recovery plan adopted by:
7450	(i) an agency of the federal government;
7451	(ii) the department; or
7452	(iii) a local health department; and
7453	(c) regularly plans and conducts its activities in coordination with:
7454	(i) an agency of the federal government;

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7455	(ii) the department; or
7456	(iii) a local health department.
7457	(2) "Emergency" means:
7458	(a) a state of emergency declared by:
7459	(i) the president of the United States;
7460	(ii) the governor in accordance with Title 53, Chapter 2a, Part 2, Disaster Response
7461	and Recovery Act; and
7462	(iii) the chief executive officer of a political subdivision in accordance with Title 53,
7463	Chapter 2a, Part 2, Disaster Response and Recovery Act, for a local emergency; or
7464	(b) a public health emergency declared by:
7465	(i) the executive director through a public health order in accordance with Title 26,
7466	Utah Health Code; or
7467	(ii) a local health department for a location under the local health department's
7468	jurisdiction.
7469	(3) "Emergency Management Assistance Compact" means the interstate compact
7470	approved by Congress by Public Law No. 104-321, 110 Stat. 3877 and adopted by Utah in
7471	Title 53, Chapter 2a, Part 4, Emergency Management Assistance Compact.
7472	(4) "Entity" means a person other than an individual.
7473	(5) "Health facility" means an entity licensed under the laws of this or another state to
7474	provide health or veterinary services.
7475	(6) "Health practitioner" means an individual licensed under Utah law or another state
7476	to provide health or veterinary services.
7477	(7) "Health services" means the provision of treatment, care, advice, guidance, other
7478	services, or supplies related to the health or death of individuals or human populations, to the
7479	extent necessary to respond to an emergency, including:
7480	(a) the following, concerning the physical or mental condition or functional status of an
7481	individual or affecting the structure or function of the body:
7482	(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care;
7483	or

- 7484 (ii) counseling, assessment, procedures, or other services;
- (b) selling or dispensing a drug, a device, equipment, or another item to an individual 7485 in accordance with a prescription; and 7486

- 7487 (c) funeral, cremation, cemetery, or other mortuary services.
- 7488 (8) "Host entity":
- 7489 (a) means an entity operating in Utah that:
- 7490 (i) uses volunteer health practitioners to respond to an emergency; and
- 7491 (ii) is responsible during an emergency, for actually delivering health services to 7492 individuals or human populations, or veterinary services to animals or animal populations;
- 7493 and
- (b) may include disaster relief organizations, hospitals, clinics, emergency shelters,
 health care provider offices, or any other place where volunteer health practitioners may
 provide health or veterinary services.
- 7497 (9) (a) "License" means authorization by a state to engage in health or veterinary services that are unlawful without authorization.
- (b) "License" includes authorization under this title to an individual to provide health or veterinary services based upon a national or state certification issued by a public or private entity.
- 7502 (10) "Local emergency" means the same as that term is defined in Section 7503 53-2a-203.
- 7504 (11) "Local health department" means the same as that term is defined in Section 7505 26A-1-102.
- 7506 (12) "Public health emergency" means the same as that term is defined in Section 7507 26-23b-102.
- 7508 (13) "Scope of practice" means the extent of the authorization to provide health or 7509 veterinary services granted to a health practitioner by a license issued to the practitioner in 7510 the state in which the principal part of the practitioner's services are rendered, including any 7511 conditions imposed by the licensing authority.
- 7512 (14) "State" means:
- 7513 (a) a state of the United States;
- 7514 (b) the District of Columbia;
- 7515 (c) Puerto Rico;
- 7516 (d) the United States Virgin Islands; or
- 7517 (e) any territory or insular possession subject to the jurisdiction of the United States.
- 7518 (15) "Veterinary services" shall have the meaning provided for in Subsection

58-28-102(11). 7519 7520 (16) (a) "Volunteer health practitioner" means a health practitioner who provides 7521 health or veterinary services, whether or not the practitioner receives compensation for those 7522 services. 7523 (b) "Volunteer health practitioner" does not include a practitioner who receives 7524 compensation under a preexisting employment relationship with a host entity or affiliate that 7525 requires the practitioner to provide health services in Utah, unless the practitioner is: 7526 (i) not a Utah resident; and 7527 (ii) employed by a disaster relief organization providing services in Utah during an 7528 emergency. 7529 7530 [26-49-103.] 26B-4-802. Applicability to volunteer health practitioners. 7531 This [chapter] part applies to volunteer health practitioners who: 7532 (1) are registered with a registration system that complies with Section 26-49-202: 7533 and 7534 (2) provide health or veterinary services in Utah for a host entity during an 7535 emergency. 7536 7537 [26-49-201.] 26B-4-803. Regulation of services during emergency. 7538 (1) During an emergency, the [Department of Health] department or a local health 7539 department may limit, restrict, or otherwise regulate: 7540 (a) the duration of practice by volunteer health practitioners; 7541 (b) the geographical areas in which volunteer health practitioners may practice; 7542 (c) the types of volunteer health practitioners who may practice; and 7543 (d) any other matters necessary to coordinate effectively the provision of health or 7544 veterinary services during the emergency. 7545 (2) An order issued under Subsection (1) takes effect immediately, without prior 7546 notice or comment, and is not a rule within the meaning of Title 63G, Chapter 3, Utah 7547 Administrative Rulemaking Act, or an adjudication within the meaning of Title 63G, Chapter 7548 4, Administrative Procedures Act.

(3) A host entity that uses volunteer health practitioners to provide health or veterinary

services in Utah shall:

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(a) to the extent practicable and in order to provide for the efficient and effective use 7551 7552 of volunteer health practitioners, consult and coordinate its activities with: 7553 (i) the Department of Health; 7554 (ii) local health departments: 7555 (iii) the Department of Agriculture and Food; or 7556 (iv) the Department of Human Services; and 7557 (b) comply with all state and federal laws relating to the management of emergency health or veterinary services. 7558 7559 7560 [26-49-202.] 26B-4-804. Volunteer health practitioner registration systems. 7561 (1) To qualify as a volunteer health practitioner registration system, the registration 7562 system shall: 7563 (a) accept applications for the registration of volunteer health practitioners before or 7564 during an emergency; (b) include information about the licensure and good standing of health practitioners 7565 that is accessible by authorized persons: 7566 7567 (c) be capable of confirming the accuracy of information concerning whether a health 7568 practitioner is licensed and in good standing before health services or veterinary services are 7569 provided under this chapter; and 7570 (d) meet one of the following conditions: 7571 (i) be an emergency system for advance registration of volunteer health practitioners 7572 established by a state and funded through the United States Department of Health and 7573 Human Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 7574 247d-7b, as amended; 7575 (ii) be a local unit consisting of trained and equipped emergency response, public 7576 health, and medical personnel formed under Section 2801 of the Public Health Services Act, 7577 42 U.S.C. Sec. 300hh as amended; 7578 (iii) be operated by a: 7579 (A) disaster relief organization; 7580 (B) licensing board;

(D) health facility that provides comprehensive inpatient and outpatient healthcare

(C) national or regional association of licensing boards or health practitioners;

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- 7583 services, including tertiary care; or
- 7584 (E) governmental entity; or

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- 7585 (iv) be designated by the Department of Health as a registration system for purposes of this chapter.
- (2) (a) Subject to Subsection (2)(b), during an emergency, the Department of Health, a person authorized to act on behalf of the Department of Health, or a host entity shall confirm whether a volunteer health practitioner in Utah is registered with a registration system that complies with Subsection (1).
 - (b) The confirmation authorized under this Subsection (2) is limited to obtaining the identity of the practitioner from the system and determining whether the system indicates that the practitioner is licensed and in good standing.
 - (3) Upon request of a person authorized under Subsection (2), or a similarly authorized person in another state, a registration system located in Utah shall notify the person of the identity of a volunteer health practitioner and whether or not the volunteer health practitioner is licensed and in good standing.
 - (4) A host entity is not required to use the services of a volunteer health practitioner even if the volunteer health practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

[26-49-203.] <u>26B-4-805.</u> Recognition of volunteer health practitioners licensed in other states.

- (1) During an emergency, a volunteer health practitioner registered with a registration system that complies with Section 26-49-202 and licensed and in good standing in the state upon which the practitioner's registration is based:
- (a) may practice in Utah to the extent authorized by this chapter as if the practitioner were licensed in Utah; and
 - (b) is exempt from:
 - (i) licensure in Utah; or
- 7611 (ii) operating under modified scope of practice provisions in accordance with 7612 Subsections 58-1-307(4) and (5).
- 7613 (2) A volunteer health practitioner qualified under Subsection (1) is not entitled to the 7614 protections of this chapter if the practitioner is licensed in more than one state and any

7615	license	of the	practitioner:

- 7616 (a) is suspended, revoked, or subject to an agency order limiting or restricting practice 7617 privileges; or
 - (b) has been voluntarily terminated under threat of sanction.

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[26-49-204.] 26B-4-806. No effect on credentialing and privileging.

- 7621 (1) For purposes of this section:
 - (a) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services.
 - (b) "Privileging" means the authorizing by an appropriate authority of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.
 - (2) This chapter does not affect credentialing or privileging standards of a health facility, and does not preclude a health facility from waiving or modifying those standards during an emergency.

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[26-49-205.] 26B-4-807. Provision of volunteer health or veterinary services --Administrative sanctions -- Authority of Division of Professional Licensing.

- (1) Subject to Subsections (2) and (3), a volunteer health practitioner shall comply with the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other Utah laws.
- (2) Except as otherwise provided in Subsection (3), this chapter does not authorize a volunteer health practitioner to provide services that are outside the volunteer health practitioner's scope of practice, even if a similarly licensed practitioner in Utah would be permitted to provide the services.
- (3) (a) In accordance with this section and Section 58-1-405, the Division of Professional Licensing may issue an order modifying or restricting the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter.
- (b) An order under this subsection takes effect immediately, without prior notice or comment, and is not a rule within the meaning of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, or a directive within the meaning of Title 63G, Chapter 4, Administrative

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- 7648 (4) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide under this chapter.
- (5) (a) A volunteer health practitioner does not engage in unauthorized practice unless the volunteer health practitioner has reason to know of any limitation, modification, or restriction under this chapter, Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, or that a similarly licensed practitioner in Utah would not be permitted to provide the services.
- 7655 (b) A volunteer health practitioner has reason to know of a limitation, modification, or 7656 restriction, or that a similarly licensed practitioner in Utah would not be permitted to provide a 7657 service, if:
- 7658 (i) the volunteer health practitioner knows the limitation, modification, or restriction 7659 exists or that a similarly licensed practitioner in Utah would not be permitted to provide the 7660 service; or
 - (ii) from all the facts and circumstances known to the volunteer health practitioner at the relevant time, a reasonable person would conclude that:
 - (A) the limitation, modification, or restriction exists; or
 - (B) a similarly licensed practitioner in Utah would not be permitted to provide the service.
 - (6) In addition to the authority granted by law of Utah other than this chapter to regulate the conduct of volunteer health practitioners, the Division of Professional Licensing Act or other disciplinary authority in Utah:
 - (a) may impose administrative sanctions upon a volunteer health practitioner licensed in Utah for conduct outside of Utah in response to an out-of-state emergency;
 - (b) may impose administrative sanctions upon a volunteer health practitioner not licensed in Utah for conduct in Utah in response to an in-state emergency; and
 - (c) shall report any administrative sanctions imposed upon a volunteer health practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the volunteer health practitioner is known to be licensed.
- 7676 (7) In determining whether or not to impose administrative sanctions under
 7677 Subsection (6), the Division of Professional Licensing Act or other disciplinary authority shall
 7678 consider the circumstances in which the conduct took place, including:

- 7679 (a) any exigent circumstances; and
- 7680 (b) the volunteer health practitioner's scope of practice, education, training, experience, and specialized skill. 7681

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[26-49-301.] 26B-4-808. Relation to other laws.

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- (1) (a) This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter.
- (b) Except as otherwise provided in Subsection (2), this chapter does not affect requirements for the use of health practitioners pursuant to Title 53, Chapter 2a, Part 4, Emergency Management Assistance Compact.
- (2) An authorized representative of a party state may incorporate volunteer health practitioners into the emergency forces of Utah even if those volunteer health practitioners are not officers or employees of Utah, a political subdivision of Utah, or a municipality or other local government within Utah.

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- [26-49-401.] 26B-4-809. Regulatory authority.
- (1) The [Department of Health] department shall make rules by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) Before adopting rules under Subsection (1), the Department of Health shall consult and consider:
- (a) the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact; and
- (b) rules adopted by similarly empowered agencies in other states in order to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible.

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- [26-49-501.] 26B-4-810. Limitations on civil liability for volunteer health practitioners.
- Volunteer health practitioners who provide health or veterinary services pursuant to this chapter are immune from liability and civil damages as set forth in Section 58-13-2.

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[26-49-601.] 26B-4-811. Workers' compensation coverage.

- 7711 (1) For purposes of this section, "injury" means a physical or mental injury or disease 7712 for which an employee of Utah who is injured or contracts the disease in the course of the 7713 employee's employment would be entitled to benefits under Title 34A, Chapter 2, Workers' 7714 Compensation Act.
- 7715 (2) A volunteer health practitioner is considered a state employee for purposes of 7716 receiving workers' compensation medical benefits under Title 34A, Chapter 2, Workers' 7717 Compensation Act, and Chapter 3, Utah Occupational Disease Act.
- 7718 (3) The state shall provide workers' compensation benefits for a volunteer health practitioner under:
 - (a) Title 34A, Chapter 2, Workers' Compensation Act; and
 - (b) Title 34A, Chapter 3, Utah Occupational Disease Act.
- (4) (a) In accordance with Section 34A-2-105, the workers' compensation benefits described in Subsection (3) are the exclusive remedy against the state or an officer, agent, or employee of the state, for all injuries and occupational diseases resulting from the volunteer health practitioner's services for the state.
 - (b) For purposes of Subsection (4)(a), the state is considered the employer of the volunteer health practitioner.
 - (5) To compute the workers' compensation benefits for a volunteer health practitioner described in Subsection (3), the average weekly wage of the volunteer health practitioner shall be the state's average weekly wage at the time of the emergency that is the basis for the volunteer health practitioner's workers' compensation claim.
 - (6) (a) The Labor Commission shall:
 - (i) adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits for injury or death by volunteer health practitioners who reside in other states; and
 - (ii) consult with and consider the practices for filing, processing, and paying claims by agencies with similar authority in other states to promote uniformity of application of this chapter with other states that enact similar legislation.
 - (b) The Labor Commission may waive or modify requirements for filing, processing, and paying claims that unreasonably burden the volunteer health practitioners.
- 7742 [26-49-701.] 26B-4-812. Uniformity of application and construction.

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7743	In applying and construing this chapter, consideration shall be given to the need to
7744	promote uniformity of the law with respect to its subject matter among states that enact it
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1	HEALTH AND HUMAN SERVICES RECODIFICATION - PREVENTION,
2	SUPPORTS, AND SUBSTANCE USE AND MENTAL HEALTH
3	
4	LONG TITLE
5	General Description:
6	This bill recodifies portions of the Utah Health Code and Utah Human Services Code
7	Highlighted Provisions:
8	This bill:
9	recodifies provisions regarding:
10	substance use and mental health;
11	 long term services and supports, aging, and disabilities; and
12	 public health and prevention; and
13	makes technical and corresponding changes.
14	Money Appropriated in this Bill:
15	None
16	Other Special Clauses:
17	This bill contains revisor's instructions.
18	List of sections affected:
19	AMENDS:
20	26B-5-101
21	26B-6-101
22	26B-7-101
23	RENUMBERS AND AMENDS:
24	62A-15-103 26B-5-102
25	62A-15-104 26B-5-103
26	62A-15-105 26B-5-104
27	62A-15-105.2 26B-5-105
28	62A-15-107 26B-5-106
29	62A-15-108 26B-5-107
30	62A-15-110 26B-5-108

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- 31 62A-15-113 26B-5-109
- 32 62A-15-103.1 26B-5-110
- 33 62A-15-115 26B-5-111
- 34 62A-15-116 26B-5-112
- 35 62A-15-117 26B-5-113
- 36 62A-15-118 26B-5-114
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- 38 62A-15-121 26B-5-116
- 39 62A-15-122 26B-5-117
- 40 62A-15-124 26B-5-118
- 41 62A-15-615 26B-5-119
- 42 62A-15-202 26B-5-201
- 43 62A-15-203 26B-5-202
- 44 62A-15-204 26B-5-203
- 45 62A-15-301 26B-5-204
- 46 62A-15-401 26B-5-205
- 47 62A-15-403 26B-5-206
- 48 62A-15-501 26B-5-207
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- 54 62A-15-603 26B-5-303
- 55 62A-15-604 26B-5-304
- 56 62A-15-605.5 26B-5-305
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- 58 62A-15-608 26B-5-307
- 59 62A-15-609 26B-5-308
- 60 62A-15-610 26B-5-309
- 61 62A-15-611 26B-5-310
- 62 62A-15-612 26B-5-311

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- 65 62A-15-616 26B-5-314
- 66 62A-15-617 26B-5-315
- 67 62A-15-618 26B-5-316
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- 81 62A-15-630.5 26B-5-330
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- 107 62A-15-702 26B-5-402
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136	62A-15-1802		26	B-5-606	
137	62A-15-1803		26	B-5-607	
138	62A-15-1804		26	B-5-608	
139	62A-15-1402		26	B-5-609	
140	62A-15-1302		26	B-5-610	
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157	62A-5-102	26B-6-	-20	2	
158	62A-5-103	26B-6-	-20	3	

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161	62A-5-106	26B-6-206
162	62A-5-103.1	26B-6-207
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227	62A-5b-106	26B-6-905
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26-62-207	26B-7-513
26-62-301	26B-7-514
26-62-302	26B-7-515
26-62-303	26B-7-516
26-62-304	26B-7-517
26-62-305	26B-7-518
26-62-306	26B-7-519
26-62-307	26B-7-520
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ENACTS:	
26B-7-324	
	26-51-201 26-15a-104 26-15a-105 26-15a-106 26-15-5 26-15-9 26-15b-105 26-62-102 26-62-102 26-62-201 26-62-201 26-62-202 26-62-203 26-62-204 26-62-205 26-62-206 26-62-301 26-62-301 26-62-302 26-62-303 26-62-304 26-62-305 26-62-305 26-62-306 26-62-307 26-62-307 26-62-307 26-62-307 26-62-307

351	Statutory text:
352	Chapter 5. Health Care - Substance Use and Mental Health.
353	
354	Part 1. General Provisions.
355	
356	26B-5-101. [Health care services Reserved] Chapter definitions.
357	[Reserved] As used in this chapter:
358	(1) "Criminal risk factors" means a person's characteristics and behaviors that:
359	(a) affect the person's risk of engaging in criminal behavior; and
360	(b) are diminished when addressed by effective treatment, supervision, and other
361	support resources, resulting in reduced risk of criminal behavior.
362	(2) "Director" means the director appointed under Section 62A-15-104.
363	(3) "Division" means the Division of Integrated Healthcare created in Section
364	<u>26B-1-202.</u>
365	(4) "Local mental health authority" means a county legislative body.
366	(5) "Local substance abuse authority" means a county legislative body.
367	(6) "Mental health crisis" means:
368	(a) a mental health condition that manifests in an individual by symptoms of sufficient
369	severity that a prudent layperson who possesses an average knowledge of mental health
370	issues could reasonably expect the absence of immediate attention or intervention to result
371	<u>in:</u>
372	(i) serious danger to the individual's health or well-being; or
373	(ii) a danger to the health or well-being of others; or
374	(b) a mental health condition that, in the opinion of a mental health therapist or the
375	therapist's designee, requires direct professional observation or intervention.
376	(7) "Mental health crisis response training" means community-based training that
377	educates laypersons and professionals on the warning signs of a mental health crisis and
378	how to respond.
379	(8) "Mental health crisis services" means an array of services provided to an
380	individual who experiences a mental health crisis, which may include:
381	(a) direct mental health services;
382	(b) on-site intervention provided by a mobile crisis outreach team;

383	(c) the provision of safety and care plans;
384	(d) prolonged mental health services for up to 90 days after the day on which an
385	individual experiences a mental health crisis;
386	(e) referrals to other community resources;
387	(f) local mental health crisis lines; and
388	(g) the statewide mental health crisis line.
389	(9) "Mental health therapist" means the same as that term is defined in Section
390	<u>58-60-102.</u>
391	(10) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and
392	mental health professionals that, in coordination with local law enforcement and emergency
393	medical service personnel, provides mental health crisis services.
394	(11) (a) "Public funds" means federal money received from the department, and state
395	money appropriated by the Legislature to the department, a county governing body, or a local
396	substance abuse authority, or a local mental health authority for the purposes of providing
397	substance abuse or mental health programs or services.
398	(b) "Public funds" include federal and state money that has been transferred by a
399	local substance abuse authority or a local mental health authority to a private provider under
400	an annual or otherwise ongoing contract to provide comprehensive substance abuse or
401	mental health programs or services for the local substance abuse authority or local mental
402	health authority. The money maintains the nature of "public funds" while in the possession of
403	the private entity that has an annual or otherwise ongoing contract with a local substance
404	abuse authority or a local mental health authority to provide comprehensive substance abuse
405	or mental health programs or services for the local substance abuse authority or local mental
406	health authority.
407	(c) Public funds received for the provision of services under substance abuse or
408	mental health service plans may not be used for any other purpose except those authorized
409	in the contract between the local mental health or substance abuse authority and provider for
410	the provision of plan services.
411	(12) "Severe mental disorder" means schizophrenia, major depression, bipolar
412	disorders, delusional disorders, psychotic disorders, and other mental disorders as defined
413	by the division.
414	(13) "Statewide mental health crisis line" means the same as that term is defined in

415	Section 62A-15-1301.
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417	[62A-15-103.] <u>26B-5-102.</u> Division Creation Responsibilities.
418	(1) (a) The [division] Division of Integrated Healthcare shall exercise responsibility
419	over the policymaking functions, regulatory and enforcement powers, rights, duties, and
420	responsibilities outlined in state law that were previously vested in the Division of Substance
421	Abuse and Mental Health within the department, under the administration and general
422	supervision of the executive director.
423	(b) The division is the substance abuse authority and the mental health authority for
424	this state.
425	(2) The division shall:
426	(a) (i) educate the general public regarding the nature and consequences of
427	substance abuse by promoting school and community-based prevention programs;
428	(ii) render support and assistance to public schools through approved school-based
429	substance abuse education programs aimed at prevention of substance abuse;
430	(iii) promote or establish programs for the prevention of substance abuse within the
431	community setting through community-based prevention programs;
432	(iv) cooperate with and assist treatment centers, recovery residences, and other
433	organizations that provide services to individuals recovering from a substance abuse
434	disorder, by identifying and disseminating information about effective practices and
435	programs;
436	(v) promote integrated programs that address an individual's substance abuse,
437	mental health, and physical health;
438	(vi) establish and promote an evidence-based continuum of screening, assessment,
439	prevention, treatment, and recovery support services in the community for individuals with a
440	substance use disorder or mental illness;
441	(vii) evaluate the effectiveness of programs described in this Subsection (2);
442	(viii) consider the impact of the programs described in this Subsection (2) on:
443	(A) emergency department utilization;
444	(B) jail and prison populations;
445	(C) the homeless population; and
446	(D) the child welfare system; and

- (ix) promote or establish programs for education and certification of instructors to 447 448 educate individuals convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body; 449
 - (b) (i) collect and disseminate information pertaining to mental health:
- 451 (ii) provide direction over the state hospital including approval of the state hospital's 452 budget, administrative policy, and coordination of services with local service plans;
- 453 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family 454 455 involvement, when appropriate, and with patient consent, in the treatment program of a 456 family member; and
 - (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that an individual receiving services through a local mental health authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;
 - (c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;
 - (ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues:
 - (iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;
 - (iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;
 - (v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;
- (vi) monitor and evaluate programs provided by local substance abuse authorities and 474 local mental health authorities: 475
 - (vii) examine expenditures of local, state, and federal funds;
- 477 (viii) monitor the expenditure of public funds by:
 - (A) local substance abuse authorities;

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- (C) in counties where they exist, a 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 authority:
- (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 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)(j); and
 - (F) appropriate expenditure of public funds;
- (xii) review and make recommendations regarding each local substance abuse authority's contract with the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with the local mental health authority's 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

511	money;
512	(d) ensure that the requirements of this part are met and applied uniformly by local
513	substance abuse authorities and local mental health authorities across the state;
514	(e) require each local substance abuse authority and each local mental health
515	authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit
516	a plan to the division on or before May 15 of each year;
517	(f) conduct an annual program audit and review of each local substance abuse
518	authority and each local substance abuse authority's contract provider, and each local mental
519	health authority and each local mental health authority's contract provider, including:
520	(i) a review and determination regarding whether:
521	(A) public funds allocated to the local substance abuse authority or the local mental
522	health authorities are consistent with services rendered by the authority or the authority's
523	contract provider, and with outcomes reported by the authority's contract provider; and
524	(B) each local substance abuse authority and each local mental health authority is
525	exercising sufficient oversight and control over public funds allocated for substance use
526	disorder and mental health programs and services; and
527	(ii) items determined by the division to be necessary and appropriate;
528	(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,
529	Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account
530	Act;
531	(h) (i) train and certify an adult as a peer support specialist, qualified to provide peer
532	supports services to an individual with:
533	(A) a substance use disorder;
534	(B) a mental health disorder; or
535	(C) a substance use disorder and a mental health disorder;
536	(ii) certify a person to carry out, as needed, the division's duty to train and certify an
537	adult as a peer support specialist;
538	(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
539	Rulemaking Act, that:
540	(A) establish training and certification requirements for a peer support specialist;
541	(B) specify the types of services a peer support specialist is qualified to provide;

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(C) specify the type of supervision under which a peer support specialist is required to

543	operate; and
544	(D) specify continuing education and other requirements for maintaining or renewing

546 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative 547 Rulemaking Act, that:

certification as a peer support specialist; and

- (A) establish the requirements for a person to be certified to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist; and
- (B) specify how the division shall provide oversight of a person certified to train and certify a peer support specialist;
- (i) collaborate with the State Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:
 - (i) pretrial services and the resources needed to reduce recidivism;
 - (ii) county jail and county behavioral health early-assessment resources needed for an individual 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;
 - (j) establish performance goals and outcome measurements for a mental health or substance use treatment program that is licensed under Chapter 2, Licensure of Programs and Facilities, and contracts with the department, including goals and measurements related to employment and reducing recidivism of individuals receiving mental health or substance use treatment who are involved with the criminal justice system;
 - (k) annually, on or before November 30, submit a written report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, and the Law Enforcement and Criminal Justice Interim Committee, that includes:
 - (i) a description of the performance goals and outcome measurements described in Subsection (2)(j); and
 - (ii) information on the effectiveness of the goals and measurements in ensuring appropriate and adequate mental health or substance use treatment is provided in a treatment program described in Subsection (2)(j);
- (I) collaborate with the Administrative Office of the Courts, the Department of
 Corrections, the Department of Workforce Services, and the Board of Pardons and Parole to
 collect data on recidivism, including data on:

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- 575 (i) individuals who participate in a mental health or substance use treatment program 576 while incarcerated and are convicted of another offense within two years after release from 577 incarceration;
 - (ii) individuals who are ordered by a criminal court or the Board of Pardons and Parole to participate in a mental health or substance use treatment program and are convicted of another offense while participating in the treatment program or within two years after the day on which the treatment program ends;
 - (iii) the type of treatment provided to, and employment of, the individuals described in Subsections (2)(I)(i) and (ii); and
 - (iv) cost savings associated with recidivism reduction and the reduction in the number of inmates in the state;
 - (m) at the division's discretion, use the data described in Subsection (2)(I) to make decisions regarding the use of funds allocated to the division to provide treatment;
 - (n) annually, on or before August 31, submit the data collected under Subsection (2)(I) and any recommendations to improve the data collection to the State Commission on Criminal and Juvenile Justice to be included in the report described in Subsection 63M-7-204(1)(x);
 - (o) publish the following on the division's website:
- (i) the performance goals and outcome measurements described in Subsection (2)(j); and
 - (ii) a description of the services provided and the contact information for the mental health and substance use treatment programs described in Subsection (2)(j) and residential, vocational and life skills programs, as defined in Section 13-53-102; and
 - (p) consult and coordinate with the Division of Child and Family Services to develop and manage the operation of a program designed to reduce substance abuse during pregnancy and by parents of a newborn child that includes:
 - (i) providing education and resources to health care providers and individuals in the state regarding prevention of substance abuse during pregnancy;
 - (ii) providing training to health care providers in the state regarding screening of a pregnant woman or pregnant minor to identify a substance abuse disorder; and
 - (iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn child in need of substance abuse treatment services to a facility that has the capacity to

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507	provide the treatment services.	
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- 608 (3) In addition to the responsibilities described in Subsection (2), the division shall, within funds appropriated by the Legislature for this purpose, implement and manage the 609 operation of a firearm safety and suicide prevention program, in consultation with the Bureau 610 611 of Criminal Identification created in Section 53-10-201, including:
 - (a) coordinating with local mental health and substance abuse authorities, a nonprofit behavioral health advocacy group, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners, to:
- 616 (i) produce and periodically review and update a firearm safety brochure and other educational materials with information about the safe handling and use of firearms that 617 618 includes:
 - (A) information on safe handling, storage, and use of firearms in a home environment;
- 620 (B) information about at-risk individuals and individuals who are legally prohibited 621 from possessing firearms;
 - (C) information about suicide prevention awareness; and
 - (D) information about the availability of firearm safety packets;
 - (ii) procure cable-style gun locks for distribution under this section;
- 625 (iii) produce a firearm safety packet that includes the firearm safety brochure and the 626 cable-style gun lock described in this Subsection (3); and
 - (iv) create a suicide prevention education course that:
 - (A) provides information for distribution regarding firearm safety education;
 - (B) incorporates current information on how to recognize suicidal behaviors and identify individuals who may be suicidal; and
 - (C) provides information regarding crisis intervention resources;
- (b) distributing, free of charge, the firearm safety packet to the following persons, who 632 shall make the firearm safety packet available free of charge: 633
 - (i) health care providers, including emergency rooms;
- (ii) mobile crisis outreach teams: 635
- 636 (iii) mental health practitioners;
- 637 (iv) other public health suicide prevention organizations;
- (v) entities that teach firearm safety courses; 638

- (vi) school districts for use in the seminar, described in Section 53G-9-702, for 639 640 parents of students in the school district; and
 - (vii) firearm dealers to be distributed in accordance with Section 76-10-526;
- (c) creating and administering a rebate program that includes a rebate that offers 642 643 between \$10 and \$200 off the purchase price of a firearm safe from a participating firearms dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah 644 resident: 645
- (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 646 making rules that establish procedures for: 647
 - (i) producing and distributing the suicide prevention education course and the firearm safety brochures and packets;
 - (ii) procuring the cable-style gun locks for distribution; and
 - (iii) administering the rebate program; and

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- (e) reporting to the Health and Human Services Interim Committee regarding implementation and success of the firearm safety program and suicide prevention education course at or before the November meeting each year.
- (4) (a) The division may refuse to contract with and may pursue 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 provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.
- (5) (a) 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 the oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309.
- (b) Nothing in this Subsection (5) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.
 - (6) In carrying out the division's 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.
- (7) 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.
 - (8) 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) use of public funds;

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- (b) oversight of public funds; and
- (c) governance of substance use disorder and mental health programs and services.
- (9) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.
- (10) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) 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.
- (11) The division shall employ a school-based mental health specialist to be housed at the State Board of Education who shall work with the State Board of Education to:
- (a) provide coordination between a local education agency and local mental health authority;
- (b) recommend evidence-based and evidence informed mental health screenings and intervention assessments for a local education agency; and
- (c) coordinate with the local community, including local departments of health, to enhance and expand mental health related resources for a local education agency.

702 [62A-15-104.] <u>26B-5-103.</u> Director -- Qualifications.

- (1) The executive director shall appoint a director within the division to carry out all or part of the duties and responsibilities described in this part.
 - (2) The director appointed under Subsection (1) shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning substance abuse and mental health.

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[62A-15-105.] 26B-5-104. Authority and responsibilities of division.

The division shall set policy for its operation and for programs funded with state and federal money under Sections 17-43-201, 17-43-301, 17-43-304, and 62A-15-110. The division shall:

- (1) in establishing rules, seek input from local substance abuse authorities, local mental health authorities, consumers, providers, advocates, division staff, and other interested parties as determined by the division;
- (2) establish, by rule, minimum standards for local substance abuse authorities and local mental health authorities;
- (3) establish, by rule, procedures for developing policies that ensure that local substance abuse authorities and local mental health authorities are given opportunity to comment and provide input on any new policy of the division or proposed changes in existing rules of the division;
- (4) provide a mechanism for review of its existing policy, and for consideration of policy changes that are proposed by local substance abuse authorities or local mental health authorities;
 - (5) develop program policies, standards, rules, and fee schedules for the division; and
- (6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, screening, and assessment that are described in Section 41-6a-501.

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[62A-15-105.2.] <u>26B-5-105.</u> Employment first emphasis on the provision of services.

- (1) As used in this section, "recipient" means an individual who is:
- 733 (a) undergoing treatment for a substance abuse problem; or
 - (b) suffers from a mental illness.

735	(2) When providing services to a recipient, the division shall, within funds
736	appropriated by the Legislature and in accordance with the requirements of federal and state
737	law and memorandums of understanding between the division and other state entities that
738	provide services to a recipient, give priority to providing services that assist an eligible
739	recipient in obtaining and retaining meaningful and gainful employment that enables the
740	recipient to earn sufficient income to:
741	(a) purchase goods and services;
742	(b) establish self-sufficiency; and
743	(c) exercise economic control of the recipient's life.
744	(3) The division shall develop a written plan to implement the policy described in
745	Subsection (2) that includes:
746	(a) assessing the strengths and needs of a recipient;
747	(b) customizing strength-based approaches to obtaining employment;
748	(c) expecting, encouraging, providing, and rewarding:
749	(i) integrated employment in the workplace at competitive wages and benefits; and
750	(ii) self-employment;
751	(d) developing partnerships with potential employers;
752	(e) maximizing appropriate employment training opportunities;
753	(f) coordinating services with other government agencies and community resources;
754	(g) to the extent possible, eliminating practices and policies that interfere with the
755	policy described in Subsection (2); and
756	(h) arranging sub-minimum wage work or volunteer work for an eligible recipient when
757	employment at market rates cannot be obtained.
758	(4) The division shall, on an annual basis:
759	(a) set goals to implement the policy described in Subsection (2) and the plan
760	described in Subsection (3);
761	(b) determine whether the goals for the previous year have been met; and
762	(c) modify the plan described in Subsection (3) as needed.
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764	[62A-15-107.] <u>26B-5-106.</u> Authority to assess fees.
765	The division may, with the approval of the Legislature and the executive director,

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establish fee schedules and assess fees for services rendered by the division.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

[62A-15-108.] <u>26B-5-107.</u> Formula for allocation of funds to local substance abuse authorities and local mental health authorities.

- (1) (a) The division shall establish, by rule, formulas for allocating funds to local substance abuse authorities and local mental health authorities through contracts, to provide substance abuse prevention and treatment services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, and mental health services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities.
- (b) The formulas shall provide for allocation of funds based on need. Determination of need shall be based on population unless the division establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need.
- (c) The formulas shall include a differential to compensate for additional costs of providing services in rural areas.
- (2) The formulas established under Subsection (1) apply to all state and federal funds appropriated by the Legislature to the division for local substance abuse authorities and local mental health authorities, but does not apply to:
- (a) funds that local substance abuse authorities and local mental health authorities receive from sources other than the division;
- (b) funds that local substance abuse authorities and local mental health authorities receive from the division to operate specific programs within their jurisdictions which are available to all residents of the state;
- (c) funds that local substance abuse authorities and local mental health authorities receive from the division to meet needs that exist only within their local areas; and
- (d) funds that local substance abuse authorities and local mental health authorities receive from the division for research projects.

[62A-15-110.] <u>26B-5-108.</u> Contracts for substance abuse and mental health services -- Provisions -- Responsibilities.

(1) If the division contracts with a local substance abuse authority or a local mental health authority to provide substance abuse or mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, or Title 17, Chapter 43, Part 3, Local Mental Health

799 Authorities, it shall ensure that those contracts include at least the following provisions:

- (a) that an independent auditor shall conduct any audit of the local substance abuse authority or its contract provider's programs or services and any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act:
 - (b) in addition to the requirements described in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:
 - (i) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and
 - (ii) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local substance abuse authority, local mental health authority, or contract provider at issue;
 - (c) the local substance abuse authority or its contract provider and the local mental health authority and its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences:
 - (d) each member of the local substance abuse authority and each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;
 - (e) requested information and outcome data will be provided to the division in the manner and within the time lines defined by the division; and
 - (f) all audit reports by state or county persons or entities concerning the local substance abuse authority or its contract provider, or the local mental health authority or its contract provider shall be provided to the executive director of the department, the local substance abuse authority or local mental health authority, and members of the contract provider's governing board.
 - (2) Each contract between the division and a local substance abuse authority or a local mental health authority shall authorize the division to withhold funds, otherwise

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allocated under Section 62A-15-108, to cover the costs of audits, attorney fees, and other expenditures associated with reviewing the expenditure of public funds by a local substance abuse authority or its contract provider or a local mental health authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local substance abuse authority or its contract provider or the local mental health authority or its contract provider.

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[62A-15-113.] <u>26B-5-109.</u> Local plan program funding.

- (1) To facilitate the distribution of newly appropriated funds beginning from fiscal year 2018 for prevention, treatment, and recovery support services that reduce recidivism or reduce the per capita number of incarcerated offenders with a substance use disorder or a mental health disorder, the division shall:
 - (a) form an application review and fund distribution committee that includes:
 - (i) one representative of the Utah Sheriffs' Association;
 - (ii) one representative of the Statewide Association of Prosecutors of Utah;
 - (iii) two representatives from the division; and
 - (iv) two representatives from the Utah Association of Counties; and
 - (b) require the application review and fund distribution committee to:
- (i) establish a competitive application process for funding of a local plan, as described in Sections 17-43-201(5)(b) and 17-43-301(6)(a)(ii);
- (ii) establish criteria in accordance with Subsection (1) for the evaluation of an application;
- (iii) ensure that the committee members' affiliate groups approve of the application process and criteria;
 - (iv) evaluate applications; and
- (v) distribute funds to programs implemented by counties, local mental health authorities, or local substance abuse authorities.
- (2) Demonstration of matching county funds is not a requirement to receive funds, but the application review committee may take into consideration the existence of matching funds when determining which programs to fund.

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[62A-15-103.1.] 26B-5-110. Suicide Prevention Education Program --

Definitions -- Grant requirements.

- (1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.
- (2) There is created a Suicide Prevention Education Program to fund suicide prevention education opportunities for federally licensed firearms dealers who operate a retail establishment open to the public and the dealers' employees.
- (3) The division, in conjunction with the bureau, shall provide a grant to an employer described in Subsection (2) in accordance with the criteria provided in Subsection 62A-15-1101(7)(b).
 - (4) An employer may apply for a grant of up to \$2,500 under the program.

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[62A-15-115.] 26B-5-111. Mental health crisis response training.

- (1) The division shall award grants to communities to conduct mental health crisis response training.
- (2) For the application and award of the grants described in Subsection (1), the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that determine:
 - (a) the requirements and process for a community to apply for a grant; and
- (b) the substantive mental health crisis response programs that qualify for the award of a grant.

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[62A-15-116.] 26B-5-112. Mobile crisis outreach team expansion.

- (1) In consultation with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202, the division shall award grants for the development of:
 - (a) five mobile crisis outreach teams:
 - (i) in counties of the second, third, fourth, fifth, or sixth class; or
- (ii) in counties of the first class, if no more than two mobile crisis outreach teams are operating or have been awarded a grant to operate in the county; and
- (b) at least three mobile crisis outreach teams in counties of the third, fourth, fifth, or sixth class.
- 893 (2) A mobile crisis outreach team awarded a grant under Subsection (1) shall provide mental health crisis services 24 hours per day, 7 days per week, and every day of the year. 894

- 895 (3) The division shall prioritize the award of a grant described in Subsection (1) to entities, based on:
 - (a) the number of individuals the proposed mobile crisis outreach team will serve; and
 - (b) the percentage of matching funds the entity will provide to develop the proposed mobile crisis outreach team.
 - (4) An entity does not need to have resources already in place to be awarded a grant described in Subsection (1).
 - (5) In consultation with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the application and award of the grants described in Subsection (1).

[62A-15-117.] <u>26B-5-113.</u> Medicaid reimbursement for school-based health services -- Report to Legislature.

- (1) As used in this section, "individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
- (2) The division shall coordinate with the State Board of Education, the Department of Health, and stakeholders to address and develop recommendations related to:
- (a) the expansion of Medicaid reimbursement for school-based health services, including how to expand Medicaid-eligible school-based services beyond the services for students with IEPs; and
- (b) other areas concerning Medicaid reimbursement for school-based health services, including the time threshold for medically necessary IEP services.
- [(3) The division, the State Board of Education, and the Department of Health shall jointly report the recommendations described in Subsection (2) to the Education Interim Committee on or before August 15, 2019.]

[62A-15-118.] 26B-5-114. Behavioral Health Receiving Center Grant Program.

- (1) As used in this section:
- (a) "Behavioral health receiving center" means a 23-hour nonsecure program or facility that is responsible for, and provides mental health crisis services to, an individual

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- 927 experiencing a mental health crisis.
- 928 (b) "Project" means a behavioral health receiving center project described in 929 Subsection (2)(a).
- (2) (a) (i) Before July 1, 2020, the division shall issue a request for proposals in accordance with this section to award a grant to one or more counties of the first or second class, as classified in Section 17-50-501, to, except as provided in Subsection (2)(a)(ii), develop and implement a behavioral health receiving center.
- 934 (ii) A grant awarded under Subsection (2)(a)(i) may not be used to purchase land for 935 the behavioral health receiving center.
 - (b) The division shall award all grants under this section before December 31, 2020.
- 937 (3) The purpose of a project is to:

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- 938 (a) increase access to mental health crisis services for individuals in the state who are 939 experiencing a mental health crisis; and
 - (b) reduce the number of individuals in the state who are incarcerated or in a hospital emergency room while experiencing a mental health crisis.
 - (4) An application for a grant under this section shall:
- 943 (a) identify the population to which the behavioral health receiving center will provide 944 mental health crisis services;
 - (b) identify the type of mental health crisis services the behavioral health receiving center will provide;
 - (c) explain how the population described in Subsection (4)(a) will benefit from the provision of mental health crisis services;
 - (d) provide details regarding:
 - (i) how the proposed project plans to provide mental health crisis services;
- 951 (ii) how the proposed project will ensure that consideration is given to the capacity of 952 the behavioral health receiving center;
- 953 (iii) how the proposed project will ensure timely and effective provision of mental 954 health crisis services;
 - (iv) the cost of the proposed project;
- (v) any existing or planned contracts or partnerships between the applicant and other individuals or entities to develop and implement the proposed project;
 - (vi) any plan to use funding sources in addition to a grant under this section for the

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959	proposed project;
960	(vii) the sustainability of the proposed project; and
961	(viii) the methods the proposed project will use to:
962	(A) protect the privacy of each individual who receives mental health crisis services
963	from the behavioral health receiving center;
964	(B) collect nonidentifying data relating to the proposed project; and
965	(C) provide transparency on the costs and operation of the proposed project; and
966	(e) provide other information requested by the division to ensure that the proposed
967	project satisfies the criteria described in Subsection (5).
968	(5) In evaluating an application for the grant, the division shall consider:
969	(a) the extent to which the proposed project will fulfill the purposes described in
970	Subsection (3);
971	(b) the extent to which the population described in Subsection (4)(a) is likely to benefit
972	from the proposed project;
973	(c) the cost of the proposed project;
974	(d) the extent to which any existing or planned contracts or partnerships between the
975	applicant and other individuals or entities to develop and implement the project, or additional
976	funding sources available to the applicant for the proposed project, are likely to benefit the
977	proposed project; and
978	(e) the viability and innovation of the proposed project.
979	(6) Before June 30, 2021, the division shall report to the Health and Human Services
980	Interim Committee regarding:
981	(a) each county awarded a grant under this section; and
982	(b) the details of each project.
983	(7) Before June 30, 2023, the division shall report to the Health and Human Services
984	Interim Committee regarding:
985	(a) data gathered in relation to each project;
986	(b) knowledge gained relating to the provision of mental health crisis services in a
987	behavioral health receiving center;
988	(c) recommendations for the future use of mental health crisis services in behavioral
989	health receiving centers; and

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(d) obstacles encountered in the provision of mental health crisis services in a

behavioral health receiving center	ŀ	behav	/ioral	health	receivina	center
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[62A-15-119.] 26B-5-115. Safety Net Initiative.

- (1) As used in this section, "individuals in underserved communities" means 994 995 individuals living in culturally isolated communities in the state who may lack access to public 996 assistance and other government services.
 - (2) There is created within the division the Safety Net Initiative to:
 - (a) implement strategies to increase awareness and reduce risk factors in order to improve the safety and well-being of individuals in underserved communities;
 - (b) coordinate with government agencies, nonprofit organizations, and interested individuals to provide open communication with individuals in underserved communities; and
 - (c) coordinate efforts to give individuals in underserved communities needed access to public assistance and other government services.
 - (3) The division may employ or contract with individuals, entities, and support staff as necessary to administer the duties required by this section.

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[62A-15-121.] 26B-5-116. Suicide technical assistance program.

- (1) As used in this section, "technical assistance" means training for the prevention of 1008 1009 suicide.
- 1010 (2) (a) Before July 1, 2021, and each subsequent July 1, the division shall solicit 1011 applications from health care organizations to receive technical assistance provided by the 1012 division.
- (b) The division shall approve at least one but not more than six applications each 1013 1014 year.
- 1015 (c) The division shall determine which applicants receive the technical assistance 1016 before December 31 of each year.
 - (3) An application for technical assistance under this section shall:
- (a) identify the population to whom the health care organization will provide suicide 1018 1019 prevention services;
- 1020 (b) identify how the health care organization plans to implement the skills and 1021 knowledge gained from the technical assistance;
- 1022 (c) identify the health care organization's current resources used for the prevention of

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1023	suicide;
1024	(d) explain how the population described in Subsection (3)(a) will benefit from the
1025	health care organization receiving technical assistance;
1026	(e) provide details regarding:
1027	(i) how the health care organization will provide timely and effective suicide prevention
1028	services;
1029	(ii) any existing or planned contracts or partnerships between the health care
1030	organization and other persons that are related to suicide prevention;
1031	(iii) the methods the health care organization will use to:
1032	(A) protect the privacy of each individual to whom the health care organization
1033	provides suicide prevention services; and
1034	(B) collect non-identifying data; and
1035	(f) provide other information requested by the division for the division to evaluate the
1036	application.
1037	(4) In evaluating an application for technical assistance, the division shall consider:
1038	(a) the extent to which providing technical assistance to the health care organization
1039	will fulfill the purpose of preventing suicides in the state;
1040	(b) the extent to which the population described in Subsection (3)(a) is likely to benefit
1041	from the health care organization receiving the technical assistance;
1042	(c) the cost of providing the technical assistance to the health care organization; and
1043	(d) the extent to which any of the following are likely to benefit the heath care
1044	organization's ability to assist in preventing suicides in the state:
1045	(i) existing or planned contracts or partnerships between the applicant and other
1046	persons to develop and implement other initiatives; or
1047	(ii) additional funding sources available to the applicant for suicide prevention
1048	services.
1049	(5) Before June 30, 2022, and each subsequent June 30, the division shall submit a
1050	written report to the Health and Human Services Interim Committee regarding each health
1051	care organization the division provided technical assistance to in the preceding year under
1052	this section.

Human Services Interim Committee regarding:

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(6) Before June 30, 2024, the division shall submit a written report to the Health and

(a) data gathered in relation to providing technical assistance to a health care organization;

(b) knowledge gained relating to providing technical assistance;

(c) recommendations for the future regarding how the state can better prevent suicides; and

(d) obstacles encountered when providing technical assistance.

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[62A-15-122.] <u>26B-5-117.</u> Early childhood mental health support grant program.

- 1064 (1) As used in this section:
 - (a) "Child care" means the child care services defined in Section 35A-3-102 for a child during early childhood.
 - (b) "Child care provider" means a person who provides child care or mental health support or interventions to a child during early childhood.
 - (c) "Early childhood" means the time during which a child is zero to six years old.
 - (d) "Project" means a project to provide education and training to child care providers regarding evidence-based best practices for delivery of mental health support and interventions during early childhood.
 - (2) On or before July 1, 2021, the division shall issue a request for proposals in accordance with this section to award a grant to a public or nonprofit entity to implement a project.
 - (3) The purpose of a project is to facilitate education about early childhood mental health support and interventions.
 - (4) An application for a grant under this section shall provide details regarding:
 - (a) the education and training regarding early childhood mental health support and interventions that the proposed project will provide to child care providers;
- 1081 (b) how the proposed project plans to provide the education and training to child care providers;
 - (c) the number of child care providers served by the proposed project;
- 1084 (d) how the proposed project will ensure the education and training is effectively provided to child care providers;
 - (e) the cost of the proposed project; and

1087	(f) the sustainability of the proposed project.
1088	(5) In evaluating a project proposal for a grant under this section, the division shall
1089	consider:
1090	(a) the extent to which the proposed project will fulfill the purpose described in
1091	Subsection (3);
1092	(b) the extent to which child care providers that will be served by the proposed project
1093	are likely to benefit from the proposed project;
1094	(c) the cost of the proposed project; and
1095	(d) the viability of the proposed project.
1096	[(6) Before June 30, 2022, the division shall report to the Health and Human Services
1097	Interim Committee regarding:
1098	(a) each entity awarded a grant under this section; and
1099	(b) the details of each project.]
1100	[(7)] <u>(6)</u> Before June 30, 2024, the division shall report to the Health and Human
1101	Services Interim Committee regarding:
1102	(a) any knowledge gained from providing the education and training regarding early
1103	childhood mental health support to child care providers;
1104	(b) data gathered in relation to each project;
1105	(c) recommendations for the future use of the education and training provided to child
1106	care providers; and
1107	(d) obstacles encountered in providing the education and training to child care
1108	providers.
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1110	[62A-15-124.] <u>26B-5-118.</u> Collaborative care grant program.
1111	(1) As used in this section:
1112	(a) "Applicant" means a small primary health care practice that applies for a grant
1113	under this section.
1114	(b) "Care manager" means an individual who plans, directs, and coordinates health
1115	care services for a patient.
1116	(c) "Collaborative care model" means a formal collaborative arrangement between a

integrated physical and behavioral health services.

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primary care physician, a mental health professional, and a care manager, to provide

- (d) "Mental health professional" means an individual licensed under Title 58, Chapter
 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing
 Act, or a psychiatrist.
- (e) "Physician" means an individual licensed to practice as a physician or osteopath under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- 1125 (f) "Primary care physician" means a physician that provides health services related to family medicine, internal medicine, pediatrics, obstetrics, gynecology, or geriatrics.
 - (g) "Program" means a program described in Subsection (2)(a).
- (h) "Psychiatrist" means a physician who is board eligible for a psychiatry
 specialization recognized by the American Board of Medical Specialists or the American
 Osteopathic Association's Bureau of Osteopathic Specialists.
- 1131 (i) "Small primary health care practice" means a medical practice of primary health 1132 care physicians that:
 - (i) includes 10 or fewer primary care physicians; or
- 1134 (ii) is primarily based in a county of the third through sixth class, as classified in Section 17-50-501.
- 1136 (2) (a) Before July 1, 2022, the division shall solicit applications from small primary 1137 health care practices for a grant to support or implement a program to provide integrated 1138 physical and behavioral health services under a collaborative care model.
 - (b) A grant under this section may be used to:
 - (i) hire and train staff to administer a program;
- 1141 (ii) identify and formalize contractual relationships with mental health professionals 1142 and case managers to implement a program; or
- 1143 (iii) purchase or upgrade software and other resources necessary to support or 1144 implement a program.
- 1145 (c) The division shall approve at least one but not more than six applications each 1146 year.
- 1147 (d) The division shall determine which applicants receive a grant under this section before December 31, 2022.
- 1149 (3) An application for a grant under this section shall:
 - (a) identify the population to whom the applicant will provide services under a

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1151	program;
1152	(b) identify the small primary health care practice's current resources that are used to
1153	provide integrated physical and behavioral health services;
1154	(c) explain how the population described in Subsection (3)(a) will benefit from the
1155	program;
1156	(d) provide details regarding:
1157	(i) how the applicant will provide timely and effective services under the program;
1158	(ii) any existing or planned contracts or partnerships between the applicant and other
1159	persons that are related to a collaborative care model;
1160	(iii) the methods the applicant will use to:
1161	(A) protect the privacy of each individual to whom the applicant provides services
1162	under the program; and
1163	(B) collect non-identifying data; and
1164	(e) provide other information requested by the division for the division to evaluate the
1165	application.
1166	(4) In evaluating an application for a grant under this section, the division shall
1167	consider:
1168	(a) the extent to which providing the grant to the applicant will fulfill the purpose of
1169	providing increased integrated physical and behavioral health services; and
1170	(b) the extent to which the population described in Subsection (3)(a) is likely to benefit
1171	from the applicant receiving the grant.
1172	(5) Before July 1, 2023, the division shall submit a written report to the Health and
1173	Human Services Interim Committee regarding each applicant the division provided a grant to
1174	in the preceding year under this section.
1175	(6) Before July 1, 2024, the division shall submit a written report to the Health and
1176	Human Services Interim Committee regarding:
1177	(a) data gathered and knowledge gained in relation to providing grants to an
1178	applicant; and
1179	(b) recommendations for how the state can better implement integrated physical and
1180	behavioral health services.
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1182	[62A-15-615.] <u>26B-5-119.</u> Forms.

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	WORKING DRAFT FOR DISCUSSION FOR FOSES ONLY
1183	The division shall furnish the clerks of the [district] courts with forms, blanks, warrants,
1184	and certificates, to enable the [district court] judges, with regularity and facility, to comply with
1185	the provisions of this chapter.
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1187	Part 2. Substance Use Disorder Intervention, Prevention, and Education.
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1189	[62A-15-202.] <u>26B-5-201.</u> Definitions.
1190	As used in this part:
1191	(1) "Juvenile substance abuse offender" means any minor who has committed a drug
1192	or alcohol related offense under the jurisdiction of the juvenile court in accordance with
1193	Section 78A-6-103.
1194	(2) "Local substance abuse authority" means a county legislative body designated to
1195	provide substance abuse services in accordance with Section 17-43-201.
1196	(3) "Minor" means the same as that term is defined in Section 80-1-102.
1197	(4) "Teen substance abuse school" means any school established by the local
1198	substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that
1199	provides an educational, interpersonal, skill-building experience for juvenile substance abuse
1200	offenders and their parents or legal guardians.
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1202	[62A-15-203.] <u>26B-5-202.</u> Teen substance abuse schools Establishment.
1203	The division or a local substance abuse authority, in cooperation with the Board of
1204	Juvenile Court Judges, may establish teen substance abuse schools in the districts of the
1205	juvenile court.
1206	
1207	[62A-15-204.] 26B-5-203. Court order to attend substance abuse school
1208	Assessments.
1209	(1) In addition to any other disposition ordered by the juvenile court under Section
1210	80-6-701, the court may order:
1211	(a) a minor and the minor's parent or legal guardian to attend a teen substance abuse

- 1213 (b) payment of an assessment in addition to any other fine imposed. 1214
 - (2) All assessments collected shall be forwarded to the county treasurer of the county

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school; and

1215	where the minor resides, to be used exclusively for the operation of a teen substance abuse
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- [62A-15-301.] <u>26B-5-204.</u> Commitment of minor to secure drug or alcohol facility or program -- Procedures -- Review.
 - (1) [For purposes of this part] As used in this section:
- 1221 (a) "Approved treatment facility or program" means a public or private secure, 1222 inpatient facility or program that is licensed or operated by the department or by the 1223 Department of Health to provide drug or alcohol treatment or rehabilitation.
 - (b) "Drug or alcohol addiction" means that the person has a physical or psychological dependence on drugs or alcohol in a manner not prescribed by a physician.
 - (2) The parent or legal guardian of a minor under the age of 18 years may submit that child, without the child's consent, to an approved treatment facility or program for treatment or rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the requirements of this section.
 - (3) The neutral fact finder who conducts the inquiry:
 - (a) shall be either a physician, psychologist, marriage and family therapist, psychiatric and mental health nurse specialist, or social worker licensed to practice in this state, who is trained and practicing in the area of substance abuse; and
 - (b) may not profit, financially or otherwise, from the commitment of the child and may not be employed by the proposed facility or program.
 - (4) The review by a neutral fact finder may be conducted on the premises of the proposed treatment facility or program.
 - (5) The inquiry conducted by the neutral fact finder shall include a private interview with the child, and an evaluation of the child's background and need for treatment.
 - (6) The child may be committed to the approved treatment facility or program if it is determined by the neutral fact finder that:
 - (a) the child is addicted to drugs or alcohol and because of that addiction poses a serious risk of harm to himself or others:
 - (b) the proposed treatment or rehabilitation is in the child's best interest; and
 - (c) there is no less restrictive alternative that would be equally as effective, from a

- 1247 clinical standpoint, as the proposed treatment facility or program.
- 1248 (7) Any approved treatment facility or program that receives a child under this section shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the 1249 1250 criteria described in Subsection (6) continue to exist.
- 1251 (8) A minor committed under this section shall be released from the facility or program 1252 upon the request of his parent or legal guardian.
- 1253 (9) Commitment of a minor under this section terminates when the minor reaches the 1254 age of 18 years.
- 1255 (10) Nothing in this section requires a program or facility to accept any person for 1256 treatment or rehabilitation.
 - (11) The parent or legal guardian who requests commitment of a minor under this section is responsible to pay any fee associated with the review required by this section and any necessary charges for commitment, treatment, or rehabilitation for a minor committed under this section.
- 1261 (12) The child shall be released from commitment unless the report of the neutral fact 1262 finder is submitted to the juvenile court within 72 hours of commitment and approved by the 1263 court.

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- [62A-15-401.] 26B-5-205. Alcohol training and education seminar.
- 1266 (1) As used in this [part] section:
- 1267 (a) "Instructor" means a person that directly provides the instruction during an alcohol training and education seminar for a seminar provider. 1268
 - (b) "Licensee" means a person who is:
- 1270 (i) (A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act; 1271 and
- 1272 (B) engaged in the retail sale of an alcoholic product for consumption on the premises 1273 of the licensee; or
 - (ii) a business that is:
- (A) a new or renewing licensee licensed by a city, town, or county; and 1275
- 1276 (B) engaged in the retail sale of beer for consumption off the premises of the 1277 licensee.
- 1278 (c) "Off-premise beer retailer" is as defined in Section 32B-1-102.

- (d) "Seminar provider" means a person other than the division who provides an 1279 1280 alcohol training and education seminar meeting the requirements of this section. 1281 (2) (a) This section applies to: 1282 (i) a retail manager as defined in Section 32B-1-701; 1283 (ii) retail staff as defined in Section 32B-1-701; and (iii) an individual who, as defined by division rule: 1284 1285 (A) directly supervises the sale of beer to a customer for consumption off the 1286 premises of an off-premise beer retailer; or 1287 (B) sells beer to a customer for consumption off the premises of an off-premise beer 1288 retailer. (b) If the individual does not have a valid record that the individual has completed an 1289 1290 alcohol training and education seminar, an individual described in Subsection (2)(a) shall: 1291 (i) (A) complete an alcohol training and education seminar within 30 days of the 1292 following if the individual is described in Subsection (2)(a)(i) or (ii): 1293 (I) if the individual is an employee, the day the individual begins employment; 1294 (II) if the individual is an independent contractor, the day the individual is first hired; or 1295 (III) if the individual holds an ownership interest in the licensee, the day that the 1296 individual first engages in an activity that would result in that individual being required to 1297 complete an alcohol training and education seminar; or 1298 (B) complete an alcohol training and education seminar within the time periods 1299 specified in Subsection 32B-1-703(1) if the individual is described in Subsection (2)(a)(iii)(A) 1300 or (B); and 1301 (ii) pay a fee: 1302 (A) to the seminar provider; and 1303 (B) that is equal to or greater than the amount established under Subsection (4)(h). 1304 (c) An individual shall have a valid record that the individual completed an alcohol
- engage in an activity described in Subsection (2)(a).

 (d) A record that an individual has completed an alcohol training and education
- (i) three years from the day on which the record is issued for an individual described in Subsection (2)(a)(i) or (ii); and

training and education seminar within the time period provided in this Subsection (2) to

seminar is valid for:

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- (ii) five years from the day on which the record is issued for an individual described in Subsection (2)(a)(iii)(A) or (B).
 - (e) On and after July 1, 2011, to be considered as having completed an alcohol training and education seminar, an individual shall:
 - (i) attend the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar in the physical presence of an instructor of the seminar provider; or
 - (ii) complete the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar through an online course or testing program that meets the requirements described in Subsection (2)(f).
 - (f) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish one or more requirements for an online course or testing program described in Subsection (2)(e) that are designed to inhibit fraud in the use of the online course or testing program. In developing the requirements by rule the division shall consider whether to require:
 - (i) authentication that the an individual accurately identifies the individual as taking the online course or test;
 - (ii) measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;
 - (iii) measures to track the actual time an individual taking the online course or test is actively engaged online;
 - (iv) a seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;
 - (v) a test to meet quality standards, including randomization of test questions and maximum time limits to take a test;
 - (vi) a seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;
 - (vii) measures for the division to audit online courses or tests;

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1343	(viii) measures to allow an individual taking an online course or test to provide an
1344	evaluation of the online course or test;
1345	(ix) a seminar provider to track the Internet protocol address or similar electronic
1346	location of an individual who takes an online course or test;
1347	(x) an individual who takes an online course or test to use an e-signature; or
1348	(xi) a seminar provider to invalidate a certificate if the seminar provider learns that the
1349	certificate does not accurately reflect the individual who took the online course or test.
1350	(3) (a) A licensee may not permit an individual who is not in compliance with
1351	Subsection (2) to:
1352	(i) serve or supervise the serving of an alcoholic product to a customer for
1353	consumption on the premises of the licensee;
1354	(ii) engage in any activity that would constitute managing operations at the premises
1355	of a licensee that engages in the retail sale of an alcoholic product for consumption on the
1356	premises of the licensee;
1357	(iii) directly supervise the sale of beer to a customer for consumption off the premises
1358	of an off-premise beer retailer; or
1359	(iv) sell beer to a customer for consumption off the premises of an off-premise beer
1360	retailer.
1361	(b) A licensee that violates Subsection (3)(a) is subject to Section 32B-1-702.
1362	(4) The division shall:
1363	(a) (i) provide alcohol training and education seminars; or
1364	(ii) certify one or more seminar providers;
1365	(b) establish the curriculum for an alcohol training and education seminar that
1366	includes the following subjects:
1367	(i) (A) alcohol as a drug; and
1368	(B) alcohol's effect on the body and behavior;
1369	(ii) recognizing the problem drinker or signs of intoxication;
1370	(iii) an overview of state alcohol laws related to responsible beverage sale or service,
1371	as determined in consultation with the Department of Alcoholic Beverage Services;
1372	(iv) dealing with the problem customer, including ways to terminate sale or service;
1373	and

(v) for those supervising or engaging in the retail sale of an alcoholic product for

1375 consumption on the premises of a licensee, alternative means of transportation to get the 1376 customer safely home; 1377 (c) recertify each seminar provider every three years; 1378 (d) monitor compliance with the curriculum described in Subsection (4)(b): 1379 (e) maintain for at least five years a record of every person who has completed an 1380 alcohol training and education seminar; 1381 (f) provide the information described in Subsection (4)(e) on request to: 1382 (i) the Department of Alcoholic Beverage Services: 1383 (ii) law enforcement; or 1384 (iii) a person licensed by the state or a local government to sell an alcoholic product; 1385 (g) provide the Department of Alcoholic Beverage Services on request a list of any 1386 seminar provider certified by the division; and (h) establish a fee amount for each person attending an alcohol training and 1387 1388 education seminar that is sufficient to offset the division's cost of administering this section. 1389 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah 1390 Administrative Rulemaking Act: 1391 (a) define what constitutes under this section an individual who: 1392 (i) manages operations at the premises of a licensee engaged in the retail sale of an 1393 alcoholic product for consumption on the premises of the licensee; 1394 (ii) supervises the serving of an alcoholic product to a customer for consumption on 1395 the premises of a licensee: 1396 (iii) serves an alcoholic product to a customer for consumption on the premises of a 1397 licensee; (iv) directly supervises the sale of beer to a customer for consumption off the 1398 1399 premises of an off-premise beer retailer; or 1400 (v) sells beer to a customer for consumption off the premises of an off-premise beer 1401 retailer; (b) establish criteria for certifying and recertifying a seminar provider; and 1402 1403 (c) establish guidelines for the manner in which an instructor provides an alcohol 1404 education and training seminar.

(6) A seminar provider shall:

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(a) obtain recertification by the division every three years;

1407	(b) ensure that an instructor used by the seminar provider:
1408	(i) follows the curriculum established under this section; and
1409	(ii) conducts an alcohol training and education seminar in accordance with the
1410	guidelines established by rule;
1411	(c) ensure that any information provided by the seminar provider or instructor of a
1412	seminar provider is consistent with:
1413	(i) the curriculum established under this section; and
1414	(ii) this section;
1415	(d) provide the division with the names of all persons who complete an alcohol
1416	training and education seminar provided by the seminar provider;
1417	(e) (i) collect a fee for each person attending an alcohol training and education
1418	seminar in accordance with Subsection (2); and
1419	(ii) forward to the division the portion of the fee that is equal to the amount described
1420	in Subsection (4)(h); and
1421	(f) issue a record to an individual that completes an alcohol training and education
1422	seminar provided by the seminar provider.
1423	(7) (a) If after a hearing conducted in accordance with Title 63G, Chapter 4,
1424	Administrative Procedures Act, the division finds that a seminar provider violates this section
1425	or that an instructor of the seminar provider violates this section, the division may:
1426	(i) suspend the certification of the seminar provider for a period not to exceed 90
1427	days;
1428	(ii) revoke the certification of the seminar provider;
1429	(iii) require the seminar provider to take corrective action regarding an instructor; or
1430	(iv) prohibit the seminar provider from using an instructor until such time that the
1431	seminar provider establishes to the satisfaction of the division that the instructor is in
1432	compliance with Subsection (6)(b).
1433	(b) The division may certify a seminar provider whose certification is revoked:
1434	(i) no sooner than 90 days from the date the certification is revoked; and
1435	(ii) if the seminar provider establishes to the satisfaction of the division that the
1436	seminar provider will comply with this section.
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1438	[62A-15-403.] <u>26B-5-206.</u> Drinking while pregnant prevention media and

1439	education campaign.
1440	(1) As used in this section:
1441	(a) "Advisory council" means the Utah Substance Use and Mental Health Advisory
1442	Council created in Section 63M-7-301.
1443	(b) "Restricted account" means the Drinking While Pregnant Prevention Media and
1444	Education Campaign Restricted Account created in Section 32B-2-308.
1445	(2) The advisory council shall:
1446	(a) provide ongoing oversight of each media and education campaign funded through
1447	the restricted account;
1448	(b) create a drinking while pregnant prevention workgroup consistent with guidelines
1449	the advisory council proposes related to the workgroup's membership and duties;
1450	(c) create guidelines for how money appropriated for a media and education
1451	campaign can be used;
1452	(d) include in the guidelines created under this Subsection (2) that a media and
1453	education campaign funded through the restricted account shall be:
1454	(i) carefully researched;
1455	(ii) developed for target groups; and
1456	(iii) appropriate for target groups; and
1457	(e) approve or deny each plan the division submits in accordance with Subsection (3).
1458	(3) (a) Subject to appropriation from the Legislature and in accordance with this
1459	section, the division shall expend money from the restricted account to direct and fund one or
1460	more media and education campaigns designed to reduce the consumption of alcohol while
1461	pregnant.
1462	(b) Before the division expends money from the restricted account for a media and
1463	education campaign, the division shall, in cooperation with the drinking while pregnant
1464	prevention workgroup created in accordance with Subsection (2), prepare and submit a plan
1465	to the advisory council that:
1466	(i) describes the media and education campaign; and
1467	(ii) details how the division intends to use money from the restricted account to fund

the media and education campaign.

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(c) If the advisory council approves the plan described in Subsection (3)(b), the

division shall conduct the media and education campaign in accordance with the guidelines

14/1 described in Subsection (2	1471	described in Subsection ((2)
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- 1472 (4) The division shall submit to the Health and Human Services Interim Committee 1473 and the advisory council annually by no later than October 1, a written report detailing:
 - (a) the use of the money for the media and education campaigns conducted in accordance with Subsection (3); and
 - (b) the impact and result of the use of the money during the previous fiscal year ending June 30.

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[62A-15-501.] <u>26B-5-207.</u> DUI -- Legislative policy -- Rehabilitation treatment and evaluation -- Use of victim impact panels.

The Legislature finds that drivers impaired by alcohol or drugs constitute a major problem in this state and that the problem demands a comprehensive detection, intervention, education, and treatment program including emergency services, outpatient treatment, detoxification, residential care, inpatient care, medical and psychological care, social service care, vocational rehabilitation, and career counseling through public and private agencies. It is the policy of this state to provide those programs at the expense of persons convicted of driving while under the influence of intoxicating liquor or drugs. It is also the policy of this state to utilize victim impact panels to assist persons convicted of driving under the influence of intoxicating liquor or drugs to gain a full understanding of the severity of their offense.

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[62A-15-502.] <u>26B-5-208.</u> Penalty for DUI conviction -- Amounts.

- (1) Courts of record and not of record may at sentencing assess against the defendant, in addition to any fine, an amount that will fully compensate agencies that treat the defendant for their costs in each case where a defendant is convicted of violating:
 - (a) Section 41-6a-502 or 41-6a-517;
- (b) a criminal prohibition resulting from a plea bargain after an original charge of violating Section 41-6a-502; or
 - (c) an ordinance that complies with the requirements of Subsection 41-6a-510(1).
- 1499 (2) The fee assessed shall be collected by the court or an entity appointed by the 1500 court.

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[62A-15-503.] <u>26B-5-209.</u> Assessments for DUI -- Use of money for

rehabilitation programs, including victim impact panels -- Rulemaking power granted.

- 1504 (1) (a) Assessments imposed under Section 62A-15-502 may, pursuant to court 1505 order:
 - (i) be collected by the clerk of the court in which the person was convicted; or
 - (ii) be paid directly to the licensed alcohol or drug treatment program.
 - (b) Assessments collected by the court under Subsection (1)(a)(i) shall be forwarded to a special nonlapsing account created by the county treasurer of the county in which the fee is collected.
 - (2) Assessments under Subsection (1) shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving while under the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related incidents in their lives. The [Division of Substance Abuse and Mental Health] division shall establish guidelines to implement victim impact panels where, in the judgment of the licensed alcohol or drug program, appropriate victims are available, and shall establish guidelines for other programs where such victims are not available.
 - (3) None of the assessments shall be maintained for administrative costs by the division.

[62A-15-504.] <u>26B-5-210.</u> Policy -- Alternatives to incarceration.

It is the policy of this state to provide adequate and appropriate health and social services as alternatives to incarceration for public intoxication.

Part 3. Utah State Hospital and Other Mental Health Facilities

[62A-15-602.] 26B-5-301. Definitions.

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

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1333	and Fart 1	z, Essentiai	Treatment and	Intervention Act]:

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- (1) "Adult" means an individual 18 years old or older.
- 1537 (2) "Approved treatment facility or program" means a mental health or substance use 1538 treatment provider that meets the goals and measurements described in Subsection 1539 62A-15-103(2)(j).
 - (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 62A-15-630.5.
 - (4) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.
- 1544 (5) "Attorney-in-fact" means an adult properly appointed under this part to make
 1545 mental health treatment decisions for a declarant under a declaration for mental health
 1546 treatment.
 - [(4)] (6) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.
 - [(5)] (7) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.
 - [(6)] <u>(8)</u> "Designated examiner" means:
 - (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or
 - (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.
 - [(7)] (9) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.
- [(8)] (10) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING DRAFT TOR DISCUSSION FURFUSES ONLY
1567	[(9)] <u>(11)</u> "Harmful sexual conduct" means the following conduct upon an individual
1568	without the individual's consent, including the nonconsensual circumstances described in
1569	Subsections 76-5-406(2)(a) through (I):
1570	(a) sexual intercourse;
1571	(b) penetration, however slight, of the genital or anal opening of the individual;
1572	(c) any sexual act involving the genitals or anus of the actor or the individual and the
1573	mouth or anus of either individual, regardless of the gender of either participant; or
1574	(d) any sexual act causing substantial emotional injury or bodily pain.
1575	[(10)] (12) "Informed waiver" means the patient was informed of a right and, after
1576	being informed of that right and the patient's right to waive the right, expressly communicated
1577	his or her intention to waive that right.
1578	(13) "Incapable" means that, in the opinion of the court in a guardianship proceeding
1579	under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's
1580	ability to receive and evaluate information effectively or communicate decisions is impaired to
1581	such an extent that the person currently lacks the capacity to make mental health treatment
1582	decisions.
1583	-15-602.
1584	[(11)] (14) "Institution" means a hospital or a health facility licensed under Section
1585	26-21-8.
1586	[(12)] (15) "Local substance abuse authority" means the same as that term is
1587	defined in Section 62A-15-102 and described in Section 17-43-201.
1588	[(13)] (16) "Mental health facility" means the Utah State Hospital or other facility that
1589	provides mental health services under contract with the division, a local mental health
1590	authority, a person that contracts with a local mental health authority, or a person that
1591	provides acute inpatient psychiatric services to a patient.
1592	[(14)] (17) "Mental health officer" means an individual who is designated by a local
1593	mental health authority as qualified by training and experience in the recognition and
1594	identification of mental illness, to:
1595	(a) apply for and provide certification for a temporary commitment; or
1596	(b) assist in the arrangement of transportation to a designated mental health facility.

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[(15)] <u>(18)</u> "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional,

behavioral, or related functioning; or 1599 1600 (b) the same as that term is defined in: (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders 1601 1602 published by the American Psychiatric Association; or 1603 (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems. 1604 (19) "Mental health treatment" means convulsive treatment, treatment with 1605 psychoactive medication, or admission to and retention in a facility for a period not to exceed 1606 1607 17 days. 1608 [(16)] (20) "Patient" means an individual who is: (a) under commitment to the custody or to the treatment services of a local mental 1609 1610 health authority; or 1611 (b) undergoing essential treatment and intervention. 1612 [(17)] (21) "Physician" means an individual who is: (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or 1613 1614 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act. 1615 1616 (18) (22) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or 1617 1618 protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (23) "State hospital" means the Utah State Hospital established in Section 1619 1620 26B-4-302. 1621 [(19)] (24) "Substantial danger" means that due to mental illness, an individual is at serious risk of: 1622 1623 (a) suicide; (b) serious bodily self-injury; 1624 (c) serious bodily injury because the individual is incapable of providing the basic 1625 necessities of life, including food, clothing, or shelter; 1626 1627 (d) causing or attempting to cause serious bodily injury to another individual: 1628 (e) engaging in harmful sexual conduct; or 1629 (f) if not treated, suffering severe and abnormal mental, emotional, or physical

distress that:

- (i) is associated with significant impairment of judgment, reason, or behavior; and 1631 1632 (ii) causes a substantial deterioration of the individual's previous ability to function 1633 independently. 1634 (25) "Treatment" means psychotherapy, medication, including the 1635 administration of psychotropic medication, or other medical treatments that are generally 1636 accepted medical or psychosocial interventions for the purpose of restoring the patient to an 1637 optimal level of functioning in the least restrictive environment. 1638 [62A-15-601.] 26B-5-302. Utah State Hospital. 1639 1640 The Utah State Hospital is established and located in Provo, in Utah county. [For 1641 purposes of this part it is referred to as the "state hospital."] 1642 1643
 - [62A-15-603.] 26B-5-303. Administration of state hospital -- Division --Authority.
 - (1) The division shall administer the state hospital as part of the state's comprehensive mental health program and, to the fullest extent possible, shall, as the state hospital's administrator, coordinate with local mental health authority programs.
 - (2) The division has the same powers, duties, rights, and responsibilities as, and shall perform the same functions that by law are conferred or required to be discharged or performed by, the state hospital.
 - (3) Supervision and administration of security responsibilities for the state hospital is vested in the division. The executive director shall designate, as special function officers, individuals with peace officer authority to perform special security functions for the state hospital.
 - (4) A director of a mental health facility that houses an involuntary patient or a patient committed by judicial order may establish secure areas, as provided in Section 76-8-311.1, within the mental health facility for the patient.
 - [62A-15-604.] 26B-5-304. Receipt of gift -- Transfer of persons from other institutions.
 - (1) The division may take and hold by gift, devise, or beguest real and personal property required for the use of the state hospital. With the approval of the governor the

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division may convert that property that is not suitable for the state hospital's use into money or property that is suitable for the state hospital's use.

- (2) The state hospital is authorized to receive from any other institution within the department an individual committed to that institution, when a careful evaluation of the treatment needs of the individual and of the treatment programs available at the state hospital indicates that the transfer would be in the interest of that individual.
- (3) (a) For the purposes of this Subsection (3), "contributions" means gifts, grants, devises, and donations.
- (b) Notwithstanding the provisions of Subsection 62A-1-111(10), the state hospital is authorized to receive contributions and deposit the contributions into an interest-bearing restricted special revenue fund. The state treasurer may invest the fund, and all interest will remain in the fund.
- (c) (i) Single expenditures from the fund in amounts of \$5,000 or less shall be approved by the superintendent.
- (ii) Single expenditures exceeding \$5,000 must be preapproved by the superintendent and the division director.
- (iii) Expenditures described in this Subsection (3) shall be used for the benefit of patients at the state hospital.
- (d) Money and interest in the fund may not be used for items normally paid for by operating revenues or for items related to personnel costs without specific legislative authorization.

[62A-15-605.5.] <u>26B-5-305.</u> Admission of person in custody of Department of Corrections to state hospital -- Retransfer of person to Department of Corrections.

- (1) The executive director of the Department of Corrections may request the director to admit a person who is in the custody of the Department of Corrections to the state hospital, if the clinical director within the Department of Corrections finds that the inmate has mentally deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental health treatment. In determining whether that inmate should be placed in the state hospital, the director of the division shall consider:
 - (a) the mental health treatment needs of the inmate;
 - (b) the treatment programs available at the state hospital; and

- (c) whether the inmate meets the requirements of Subsection 62A-15-610(2).
- 1696 (2) If the director denies the admission of an inmate as requested by the clinical
 1697 director within the Department of Corrections, the Board of Pardons and Parole shall
 1698 determine whether the inmate will be admitted to the state hospital. The Board of Pardons
 1699 and Parole shall consider:
 - (a) the mental health treatment needs of the inmate;

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- (b) the treatment programs available at the state hospital; and
- (c) whether the inmate meets the requirements of Subsection 62A-15-610(2).
- (3) The state hospital shall receive any person in the custody of the Department of Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the custody of the Department of Corrections, and the state hospital shall act solely as the agent of the Department of Corrections.
- (4) Inmates transferred to the state hospital pursuant to this section shall be transferred back to the Department of Corrections through negotiations between the director and the director of the Department of Corrections. If agreement between the director and the director of the Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final authority in determining whether a person will be transferred back to the Department of Corrections. In making that determination, that board shall consider:
 - (a) the mental health treatment needs of the inmate;
 - (b) the treatment programs available at the state hospital:
- 1716 (c) whether the person continues to meet the requirements of Subsection 1717 62A-15-610(2);
 - (d) the ability of the state hospital to provide adequate treatment to the person, as well as safety and security to the public; and
- 1720 (e) whether, in the opinion of the director, in consultation with the clinical director of the state hospital, the person's treatment needs have been met.

1723 [62A-15-607.] <u>26B-5-306.</u> Responsibility for cost of care.

(1) The division shall estimate and determine, as nearly as possible, the actual expense per annum of caring for and maintaining a patient in the state hospital, and that amount or portion of that amount shall be assessed to and paid by the applicant, patient,

1727	spouse, parents, child or children who are of sufficient financial ability to do so, or by the
1728	guardian of the patient who has funds of the patient that may be used for that purpose.

(2) In addition to the expenses described in Subsection (1), parents are responsible for the support of their child while the child is in the care of the state hospital pursuant to Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services.

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- [62A-15-608.] 26B-5-307. Local mental health authority -- Supervision and treatment of persons with a mental illness.
- 1735 (1) Each local mental health authority has responsibility for supervision and treatment 1736 of persons with a mental illness who have been committed to its custody under the provisions 1737 of this part, whether residing in the state hospital or elsewhere.
 - (2) The division, in administering and supervising the security responsibilities of the state hospital under its authority provided by Section 62A-15-603, shall enforce Sections 62A-15-620 through 62A-15-624 to the extent they pertain to the state hospital.

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- [62A-15-609.] 26B-5-308. Responsibility for education of school-aged children at the hospital -- Responsibility for noninstructional services.
- (1) The State Board of Education is responsible for the education of school-aged children committed to the division.
- (2) In order to fulfill its responsibility under Subsection (1), the board may contract with local school districts or other appropriate agencies to provide educational and related administrative services.
- (3) Medical, residential, and other noninstructional services at the state hospital are the responsibility of the division.

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- [62A-15-610.] 26B-5-309. Objectives of state hospital and other facilities --1752 1753 Persons who may be admitted to state hospital.
 - (1) The objectives of the state hospital and other mental health facilities shall be to care for all persons within this state who are subject to the provisions of this chapter; and to furnish them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation, and support that is conducive to their physical and mental well-being.

- 1759 (2) Only the following persons may be admitted to the state hospital:
- (a) persons 18 years of age and older who meet the criteria necessary for
 commitment under this part and who have severe mental disorders for whom no appropriate,
 less restrictive treatment alternative is available;
 - (b) persons under 18 years of age who meet the criteria necessary for commitment under [Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health] Part 4, Commitment of Persons Under Age 18, and for whom no less restrictive alternative is available;
 - (c) persons adjudicated and found to be guilty with a mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;
 - (d) persons adjudicated and found to be not guilty by reason of insanity who are under a subsequent commitment order because they have a mental illness and are a danger to themselves or others, under Section 77-16a-302;
 - (e) persons found incompetent to proceed under Section 77-15-6;
 - (f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and
 - (g) persons in the custody of the Department of Corrections, admitted in accordance with Section 62A-15-605.5, giving priority to those persons with severe mental disorders.

[62A-15-611.] <u>26B-5-310.</u> Allocation of state hospital beds -- Formula.

(1) As used in this section:

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- (a) "Adult beds" means the total number of patient beds located in the adult general psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of the state hospital.
- (b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.
- (2) (a) The division shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a). Beginning on May 10, 2011, and ending on June 30, 2011, 152 beds shall be allocated to local mental health authorities under this section.
 - (b) The number of beds shall be reviewed and adjusted as necessary:
- (i) on July 1, 2011, to restore the number of beds allocated to 212 beds as funding

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- (ii) on July 1, 2011, and every three years after July 1, 2011, according to the state's population.
- 1794 (c) All population figures utilized shall reflect the most recent available population 1795 estimates from the Utah Population Committee.
- 1796 (3) The formula established under Subsection (2) shall provide for allocation of beds based on:
- 1798 (a) the percentage of the state's adult population located within a mental health catchment area; and
 - (b) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located in urban areas.
 - (4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.
 - (5) The division shall allocate adult beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under the formula established under Subsection (2), the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.
- 1810 (6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

[62A-15-612.] 26B-5-311. Allocation of pediatric state hospital beds -- Formula.

- (1) As used in this section:
- (a) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.
- (b) "Pediatric beds" means the total number of patient beds located in the children's unit and the youth units at the state hospital, as determined by the superintendent of the state hospital.
- 1820 (2) On July 1, 1996, 72 pediatric beds shall be allocated to local mental health 1821 authorities under this section. The division shall review and adjust the number of pediatric 1822 beds as necessary every three years according to the state's population of persons under 18

years of age. All population figures utilized shall reflect the most recent available population estimates from the Governor's Office of Planning and Budget.

- (3) The allocation of beds shall be based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area. Each community mental health center shall be allocated at least one bed.
- (4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.
- (5) The division shall allocate 72 pediatric beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under that formula, the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

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[62A-15-613.] 26B-5-312. Appointment of superintendent -- Qualifications --Powers and responsibilities.

- (1) The director, with the consent of the executive director, shall appoint a superintendent of the state hospital, who shall hold office at the will of the director.
- (2) The superintendent shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning mental health.
- (3) The superintendent has general responsibility for the buildings, grounds, and property of the state hospital.
- (4) The superintendent shall appoint, with the approval of the director, as many employees as necessary for the efficient and economical care and management of the state hospital, and shall fix the employees' compensation and administer personnel functions according to the standards of the Division of Human Resource Management.

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[62A-15-614.] 26B-5-313. Clinical director -- Appointment -- Conditions and procedure -- Duties.

(1) Whenever the superintendent is not qualified to be the clinical director of the state hospital under this section, [he] the superintendent shall, with the approval of the director of

the division, appoint a clinical director who is licensed to practice medicine and surgery in this state, and who has had at least three years' training in a psychiatric residency program approved by the American Board of Psychiatry and Neurology, Inc., and who is eligible for certification by that board.

- (2) The salary of the clinical director of the state hospital shall be fixed by the standards of the Division of Finance, to be paid in the same manner as the salaries of other employees.
- (3) The clinical director shall perform such duties as directed by the superintendent and prescribed by the rules of the board, and shall prescribe and direct the treatment of patients and adopt sanitary measures for their welfare.
- [(3)] (4) If the superintendent is qualified to be the clinical director, [he] the superintendent may assume the duties of the clinical director.

[62A-15-616.] 26B-5-314. Persons entering state mentally ill.

- (1) A person who enters this state while mentally ill may be returned by a local mental health authority to the home of relatives or friends of that person with a mental illness, if known, or to a hospital in the state where that person with a mental illness is domiciled, in accordance with Title 62A, Chapter 15, Part 8, Interstate Compact on Mental Health.
- (2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

[62A-15-617.] <u>26B-5-315.</u> Expenses of voluntary patients.

The expense for the care and treatment of voluntary patients shall be assessed to and paid in the same manner and to the same extent as is provided for involuntary patients under the provisions of Section 62A-15-607.

[62A-15-618.] <u>26B-5-316.</u> Designated examiners.

- (1) A designated examiner shall consider a proposed patient's mental health history when evaluating a proposed patient.
- (2) A designated examiner may request a court order to obtain a proposed patient's mental health records if a proposed patient refuses to share this information with the designated examiner.

- 1887 (3) A designated examiner, when evaluating a proposed patient for civil commitment, shall consider whether:
 - (a) a proposed patient has been under a court order for assisted outpatient treatment;
- 1890 (b) the proposed patient complied with the terms of the assisted outpatient treatment order, if any; and
 - (c) whether assisted outpatient treatment is sufficient to meet the proposed patient's needs.
 - (4) A designated examiner shall be allowed a reasonable fee by the county legislative body of the county in which the proposed patient resides or is found, unless the designated examiner is otherwise paid.

[62A-15-619.] 26B-5-317. Liability of estate of person with a mental illness.

The provisions made in this part for the support of persons with a mental illness at public expense do not release the estates of those persons from liability for their care and treatment, and the division is authorized and empowered to collect from the estates of those persons any sums paid by the state in their behalf.

[62A-15-620.] <u>26B-5-318.</u> Attempt to commit person contrary to requirements --

Any person who attempts to place another person in the custody of a local mental health authority contrary to the provisions of this part is guilty of a class B misdemeanor, in addition to liability in an action for damages, or subject to other criminal charges.

[62A-15-621.] <u>26B-5-319.</u> Trespass -- Disturbance -- Penalty.

Any person who, without permission, enters any of the buildings or enclosures appropriated to the use of patients, or makes any attempt to do so, or enters anywhere upon the premises belonging to or used by the division, a local mental health authority, or the state hospital and commits, or attempts to commit, any trespass or depredation thereon, or any person who, either from within or without the enclosures, willfully annoys or disturbs the peace or quiet of the premises or of any patient therein, is guilty of a class B misdemeanor.

[62A-15-622.] <u>26B-5-320.</u> Abduction of patient -- Penalty.

Any person who abducts a patient who is in the custody of a local mental health authority, or induces any patient to elope or escape from that custody, or attempts to do so, or aids or assists therein, is guilty of a class B misdemeanor, in addition to liability for damages, or subject to other criminal charges.

[62A-15-623.] 26B-5-321. Criminal's escape -- Penalty.

Any person committed to the state hospital under the provisions of Title 77, Chapter 15, Inquiry into Sanity of Defendant, or Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

[62A-15-624.] <u>26B-5-322.</u> Violations of this part -- Penalty.

Any person who willfully and knowingly violates any provision of this part, except where another penalty is provided by law, is guilty of a class C misdemeanor.

[62A-15-625.] <u>26B-5-323.</u> Voluntary admission of adults.

- (1) A local mental health authority, a designee of a local mental health authority, or another mental health facility may admit for observation, diagnosis, care, and treatment an adult who applies for voluntary admission and who has a mental illness or exhibits the symptoms of a mental illness.
- (2) No adult may be committed to a local mental health authority against that adult's will except as provided in this chapter.
- (3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Section 77-18-106 have been met.

[62A-15-626.] 26B-5-324. Release from commitment.

- (1) (a) Subject to Subsection (1)(b), a local mental health authority or the mental health authority's designee shall release from commitment any individual who, in the opinion of the local mental health authority or the mental health authority's designee, has recovered or no longer meets the criteria specified in Section 62A-15-631.
- (b) A local mental health authority's inability to locate a committed individual may not

1951 be the basis for the individual's release, unless the court orders the release of the individual 1952 after a hearing.

- (2) A local mental health authority or the mental health authority's designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 62A-15-705, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.
- (3) When a patient has been committed to a local mental health authority by judicial process, the local mental health authority shall follow the procedures described in Sections 62A-15-636 and 62A-15-637.

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[62A-15-627.] 26B-5-325. Release of voluntary adult -- Exceptions.

- (1) Except as provided in Subsection (2), a mental health facility shall immediately release an adult patient:
- (a) who is voluntarily admitted, as described in Section 62A-15-625, and who requests release, verbally or in writing; or
- (b) whose release is requested in writing by the patient's legal guardian, parent, spouse, or adult next of kin.
- (2) (a) An adult patient's release under Subsection (1) may be conditioned upon the agreement of the patient, if:
 - (i) the request for release is made by an individual other than the patient; or
- (ii) the admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility has cause to believe that release of the patient would be unsafe for the patient or others.
- (b) (i) An adult patient's release may be postponed for up to 48 hours, excluding weekends and holidays, if the admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility causes involuntary commitment proceedings to be commenced with the [district] court within the specified time period.
- (ii) The admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility shall provide written notice of the postponement and the reasons for the postponement to the patient without undue delay.

(3) A judicial proceeding for involuntary commitment may not be commenced with
respect to a voluntary patient unless the patient requests release.

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[62A-15-628.] 26B-5-326. Involuntary commitment -- Procedures.

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(1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:

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(a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 62A-15-629(1)(a):

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(b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 62A-15-629(1)(b); or

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(c) commitment on court order, as provided in Section 62A-15-631.

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(2) A person under 18 years of age may be committed to the physical custody of a local mental health authority only in accordance with the provisions of [Part 7, Commitment

1996 of Persons Under Age 18 to Division of Substance Abuse and Mental Health] Part 4,

1997 Commitment of Persons Under Age 18.

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[62A-15-629.] 26B-5-327. Temporary commitment -- Requirements and procedures -- Rights.

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(1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:

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(a) a written application that:

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that the adult, due to mental illness, is likely to pose substantial danger to self or others if not restrained and stating the personal knowledge of the adult's condition or circumstances that

(ii) includes a certification by a licensed physician, licensed physician assistant,

(i) is completed by a responsible individual who has reason to know, stating a belief

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lead to the individual's belief; and

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licensed nurse practitioner, or designated examiner stating that the physician, physician

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assistant, nurse practitioner, or designated examiner has examined the adult within a three-day period immediately preceding the certification, and that the physician, physician

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assistant, nurse practitioner, or designated examiner is of the opinion that, due to mental

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illness, the adult poses a substantial danger to self or others; or

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(b) a peace officer or a mental health officer:

- 2015 (i) observing an adult's conduct that gives the peace officer or mental health officer 2016 probable cause to believe that:
 - (A) the adult has a mental illness; and
- 2018 (B) because of the adult's mental illness and conduct, the adult poses a substantial danger to self or others; and
 - (ii) completing a temporary commitment application that:
- 2021 (A) is on a form prescribed by the division;

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- 2022 (B) states the peace officer's or mental health officer's belief that the adult poses a 2023 substantial danger to self or others;
 - (C) states the specific nature of the danger;
- 2025 (D) provides a summary of the observations upon which the statement of danger is 2026 based; and
- 2027 (E) provides a statement of the facts that called the adult to the peace officer's or 2028 mental health officer's attention.
 - (2) If at any time a patient committed under this section no longer meets the commitment criteria described in Subsection (1), the local mental health authority or the local mental health authority's designee shall document the change and release the patient.
 - (3) (a) A patient committed under this section may be held for a maximum of 24 hours after commitment, excluding Saturdays, Sundays, and legal holidays, unless:
 - (i) as described in Section 62A-15-631, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 62A-15-631(4);
 - (ii) the patient makes a voluntary application for admission; or
- 2038 (iii) before expiration of the 24 hour period, a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner examines the patient and certifies in writing that:
 - (A) the patient, due to mental illness, poses a substantial danger to self or others;
- 2042 (B) additional time is necessary for evaluation and treatment of the patient's mental 2043 illness; and
- 2044 (C) there is no appropriate less-restrictive alternative to commitment to evaluate and 2045 treat the patient's mental illness.
 - (b) A patient described in Subsection (3)(a)(iii) may be held for a maximum of 48

- hours after the 24 hour period described in Subsection (3)(a) expires, excluding Saturdays, 2047 2048 Sundays, and legal holidays.
- 2049 (c) Subsection (3)(a)(iii) applies to an adult patient.

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- 2050 (4) Upon a written application described in Subsection (1)(a) or the observation and 2051 belief described in Subsection (1)(b)(i), the adult shall be:
- (a) taken into a peace officer's protective custody, by reasonable means, if necessary 2052 2053 for public safety; and
- 2054 (b) transported for temporary commitment to a facility designated by the local mental 2055 health authority, by means of:
- 2056 (i) an ambulance, if the adult meets any of the criteria described in Section 26-8a-305: 2057
 - (ii) an ambulance, if a peace officer is not necessary for public safety, and transportation arrangements are made by a physician, physician assistant, nurse practitioner, designated examiner, or mental health officer;
 - (iii) the city, town, or municipal law enforcement authority with jurisdiction over the location where the adult is present, if the adult is not transported by ambulance:
 - (iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law enforcement authority described in Subsection (4)(b)(iii) and the adult is not transported by ambulance; or
 - (v) nonemergency secured behavioral health transport as that term is defined in Section 26-8a-102.
 - (5) Notwithstanding Subsection (4):
 - (a) an individual shall be transported by ambulance to an appropriate medical facility for treatment if the individual requires physical medical attention:
 - (b) if an officer has probable cause to believe, based on the officer's experience and de-escalation training that taking an individual into protective custody or transporting an individual for temporary commitment would increase the risk of substantial danger to the individual or others, a peace officer may exercise discretion to not take the individual into custody or transport the individual, as permitted by policies and procedures established by the officer's law enforcement agency and any applicable federal or state statute, or case law; and
 - (c) if an officer exercises discretion under Subsection (4)(b) to not take an individual

2079	into protective custody or transport an individual, the officer shall document in the officer's
2080	report the details and circumstances that led to the officer's decision.

- (6) (a) The local mental health authority shall inform an adult patient committed under 2081 2082 this section of the reason for commitment.
 - (b) An adult patient committed under this section has the right to:
 - (i) within three hours after arrival at the local mental health authority, make a telephone call, at the expense of the local mental health authority, to an individual of the patient's choice; and
 - (ii) see and communicate with an attorney.

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- 2088 (7) (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this 2089 section.
 - (b) This section does not create a special duty of care.

[62A-15-630.] <u>26B-5-328.</u> Mental health commissioners.

The court may appoint a mental health commissioner to assist in conducting commitment proceedings in accordance with Section 78A-5-107.

[62A-15-630.4.] 26B-5-329. Assisted outpatient treatment services.

- (1) The local mental health authority or [its] the local mental health authority's designee shall provide assisted outpatient treatment, which shall include:
 - (a) case management; and
- (b) an individualized treatment plan, created with input from the proposed patient when possible.
- (2) A court order for assisted outpatient treatment does not create independent authority to forcibly medicate a patient.

[62A-15-630.5.] 26B-5-330. Assisted outpatient treatment proceedings.

- (1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need for assisted outpatient treatment may file, in the [district] court in the county where the proposed patient resides or is found, a written application that includes:
 - (a) unless the court finds that the information is not reasonably available, the

	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
2111	proposed patient's:
2112	(i) name;
2113	(ii) date of birth; and
2114	(iii) social security number; and
2115	(b) (i) a certificate of a licensed physician or a designated examiner stating that within
2116	the seven-day period immediately preceding the certification, the physician or designated
2117	examiner examined the proposed patient and is of the opinion that the proposed patient has
2118	a mental illness and should be involuntarily committed; or
2119	(ii) a written statement by the applicant that:
2120	(A) the proposed patient has been requested to, but has refused to, submit to an
2121	examination of mental condition by a licensed physician or designated examiner;
2122	(B) is sworn to under oath; and
2123	(C) states the facts upon which the application is based.
2124	(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may
2125	require the applicant to consult with the appropriate local mental health authority, and the
2126	court may direct a mental health professional from that local mental health authority to
2127	interview the applicant and the proposed patient to determine the existing facts and report
2128	them to the court.
2129	(b) The consultation described in Subsection (2)(a):
2130	(i) may take place at or before the hearing; and
2131	(ii) is required if the local mental health authority appears at the hearing.
2132	(3) If the proposed patient refuses to submit to an interview described in Subsection
2133	(2)(a) or an examination described in Subsection (8), the court may issue an order, directed
2134	to a mental health officer or peace officer, to immediately place the proposed patient into the
2135	custody of a local mental health authority or in a temporary emergency facility, as provided in
2136	Section 62A-15-634, to be detained for the purpose of examination.
2137	(4) Notice of commencement of proceedings for assisted outpatient treatment, setting
2138	forth the allegations of the application and any reported facts, together with a copy of any
2139	official order of detention, shall:

in the custody of a local mental health authority;

custody of a local mental health authority or, with respect to any proposed patient presently

(a) be provided by the court to a proposed patient before, or upon, placement into the

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- 2143 (b) be maintained at the proposed patient's place of detention, if any;
 2144 (c) be provided by the court as soon as practicable to the applicant, any legal
 2145 guardian, any immediate adult family members, legal counsel for the parties involved, the
 2146 local mental health authority or its designee, and any other person whom the proposed
 2147 patient or the court shall designate; and
 - (d) advise that a hearing may be held within the time provided by law.
 - (5) The [district] court may, in its discretion, transfer the case to any other [district] court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.
 - (6) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention in order to complete an examination, the court shall appoint two designated examiners:
- 2156 (a) who did not sign the assisted outpatient treatment application nor the certification described in Subsection (1);
 - (b) one of whom is a licensed physician; and
- 2159 (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
 - (7) The court shall schedule a hearing to be held within 10 calendar days of the day on which the designated examiners are appointed.
 - (8) The designated examiners shall:

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- (a) conduct their examinations separately;
- (b) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health;
 - (c) inform the proposed patient, if not represented by an attorney:
 - (i) that the proposed patient does not have to say anything;
- 2170 (ii) of the nature and reasons for the examination;
- 2171 (iii) that the examination was ordered by the court:
- 2172 (iv) that any information volunteered could form part of the basis for the proposed 2173 patient to be ordered to receive assisted outpatient treatment; and
 - (v) that findings resulting from the examination will be made available to the court;

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- (d) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill. If the designated examiner reports orally, the designated examiner shall immediately send a written report to the clerk of the court.
 - (9) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.
 - (10) If the local mental health authority, its designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to an assisted outpatient treatment hearing no longer exist, the local mental health authority, its designee, or the medical examiner shall immediately report that determination to the court.
 - (11) The court may terminate the proceedings and dismiss the application at any time, including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient does not meet the criteria in Subsection (14).
 - (12) Before the hearing, an opportunity to be represented by counsel shall be afforded to the proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or is found.
 - (13) (a) All persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other individual. The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.
 - (b) The court is authorized to exclude all individuals not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.
 - (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the

2207	mental	health	of the	pro	posed	patient.

- 2208 (d) The court shall consider all relevant historical and material information that is 2209 offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah 2210 Rules of Evidence.
- (e) (i) A local mental health authority or its designee, or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:
- (A) the detention order, if any;
- 2215 (B) admission notes, if any;
- (C) the diagnosis, if any;
- (D) doctor's orders, if any;
- 2218 (E) progress notes, if any;
- (F) nursing notes, if any; and
- (G) medication records, if any.
- 2221 (ii) The information described in Subsection (13)(e)(i) shall also be provided to the 2222 proposed patient's counsel:
- (A) at the time of the hearing; and
- (B) at any time prior to the hearing, upon request.
- 2225 (14) The court shall order a proposed patient to assisted outpatient treatment if, upon 2226 completion of the hearing and consideration of the information presented, the court finds by 2227 clear and convincing evidence that:
- (a) the proposed patient has a mental illness;
- 2229 (b) there is no appropriate less-restrictive alternative to a court order for assisted 2230 outpatient treatment; and
 - (c) (i) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental health treatment, as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment; or
 - (ii) the proposed patient needs assisted outpatient treatment in order to prevent relapse or deterioration that is likely to result in the proposed patient posing a substantial danger to self or others.
- 2237 (15) The court may order the applicant or a close relative of the patient to be the patient's personal representative, as described in 45 C.F.R. Sec. 164.502(q), for purposes of

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2239 the patient's mental health treatment.

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- 2240 (16) In the absence of the findings described in Subsection (14), the court, after the 2241 hearing, shall dismiss the proceedings.
- 2242 (17) (a) The assisted outpatient treatment order shall designate the period for which the patient shall be treated, which may not exceed 12 months without a review hearing.
- 2244 (b) At a review hearing, the court may extend the duration of an assisted outpatient 2245 treatment order by up to 12 months, if:
- 2246 (i) the court finds by clear and convincing evidence that the patient meets the conditions described in Subsection (14); or
 - (ii) (A) the patient does not appear at the review hearing;
 - (B) notice of the review hearing was provided to the patient's last known address by the applicant described in Subsection (1) or by a local mental health authority; and
- (C) the patient has appeared in court or signed an informed waiver within the previous 18 months.
 - (c) The court shall maintain a current list of all patients under its order of assisted outpatient treatment.
 - (d) At least two weeks prior to the expiration of the designated period of any assisted outpatient treatment order still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee.
 - (18) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.
 - (19) A court may not hold an individual in contempt for failure to comply with an assisted outpatient treatment order.
- 2262 (20) As provided in Section 31A-22-651, a health insurance provider may not deny an 2263 insured the benefits of the insured's policy solely because the health care that the insured 2264 receives is provided under a court order for assisted outpatient treatment.

[62A-15-631.] <u>26B-5-331.</u> Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.

(1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the [district]

court in the county where the proposed patient resides or is found, a written application that 2271 2272 includes:

- (a) unless the court finds that the information is not reasonably available, the 2273 2274 proposed patient's:
- 2275 (i) name;

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- 2276 (ii) date of birth; and
- 2277 (iii) social security number;
- 2278 (b) (i) a certificate of a licensed physician or a designated examiner stating that within 2279 the seven-day period immediately preceding the certification, the physician or designated 2280 examiner examined the proposed patient and is of the opinion that the proposed patient has 2281 a mental illness and should be involuntarily committed; or
 - (ii) a written statement by the applicant that:
 - (A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;
 - (B) is sworn to under oath; and
 - (C) states the facts upon which the application is based; and
- 2287 (c) a statement whether the proposed patient has previously been under an assisted 2288 outpatient treatment order, if known by the applicant.
 - (2) Before issuing a judicial order, the court:
 - (a) shall require the applicant to consult with the appropriate local mental health authority at or before the hearing; and
 - (b) may direct a mental health professional from the local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report the existing facts to the court.
 - (3) The court may issue an order, directed to a mental health officer or peace officer, to immediately place a proposed patient in the custody of a local mental health authority or in a temporary emergency facility, as described in Section 62A-15-634, to be detained for the purpose of examination if:
 - (a) the court finds from the application, any other statements under oath, or any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a danger to self or others and requires involuntary commitment pending examination and hearing; or

- (b) the proposed patient refuses to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily.
- (4) (a) The court shall provide notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, to a proposed patient before, or upon, placement of the proposed patient in the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court.
 - (b) The place of detention shall maintain a copy of the order of detention.
- (5) (a) The court shall provide notice of commencement of proceedings for involuntary commitment as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or the local mental health authority's designee, and any other persons whom the proposed patient or the court designates.
- (b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall advise the persons that a hearing may be held within the time provided by law.
- (c) If the proposed patient refuses to permit release of information necessary for provisions of notice under this subsection, the court shall determine the extent of notice.
- (6) Proceedings for commitment of an individual under 18 years old to a local mental health authority may be commenced in accordance with [Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health] Part 4, Commitment of Persons Under Age 18.
- (7) (a) The [district] court may, in the [district] court's discretion, transfer the case to any other [district] court within this state, if the transfer will not be adverse to the interest of the proposed patient.
- (b) If a case is transferred under Subsection (7)(a), the parties to the case may be transferred and the local mental health authority may be substituted in accordance with Utah Rules of Civil Procedure, Rule 25.
- (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or the local mental health authority's designee under court order for detention

2335	or examination,	the court shall	appoint two	designated examiners:
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- 2336 (a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);
 - (b) one of whom is a licensed physician; and
- 2339 (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
- 2341 (9) The court shall schedule a hearing to be held within 10 calendar days after the day on which the designated examiners are appointed.
 - (10) (a) The designated examiners shall:

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- (i) conduct the examinations separately;
- 2345 (ii) conduct the examinations at the home of the proposed patient, at a hospital or 2346 other medical facility, or at any other suitable place, including through telehealth, that is not 2347 likely to have a harmful effect on the proposed patient's health;
 - (iii) inform the proposed patient, if not represented by an attorney:
 - (A) that the proposed patient does not have to say anything;
 - (B) of the nature and reasons for the examination;
 - (C) that the examination was ordered by the court;
- 2352 (D) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment;
- 2354 (E) that findings resulting from the examination will be made available to the court; 2355 and
 - (F) that the designated examiner may, under court order, obtain the proposed patient's mental health records; and
 - (iv) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 62A-15-625, or has acceptable programs available to the proposed patient without court proceedings.
 - (b) If a designated examiner reports orally under Subsection (10)(a), the designated examiner shall immediately send a written report to the clerk of the court.
- 2364 (11) If a designated examiner is unable to complete an examination on the first 2365 attempt because the proposed patient refuses to submit to the examination, the court shall 2366 fix a reasonable compensation to be paid to the examiner.

- 2367 (12) If the local mental health authority, the local mental health authority's designee, 2368 or a medical examiner determines before the court hearing that the conditions justifying the 2369 findings leading to a commitment hearing no longer exist, the local mental health authority, 2370 the local mental health authority's designee, or the medical examiner shall immediately report 2371 the determination to the court.
 - (13) The court may terminate the proceedings and dismiss the application at any time, including before the hearing, if the designated examiners or the local mental health authority or the local mental health authority's designee informs the court that the proposed patient:
 - (a) does not meet the criteria in Subsection (16);

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- (b) has agreed to voluntary commitment, as described in Section 62A-15-625;
- 2378 (c) has acceptable options for treatment programs that are available without court proceedings; or
 - (d) meets the criteria for assisted outpatient treatment described in Section 62A-15-630.5.
 - (14) (a) Before the hearing, the court shall provide the proposed patient an opportunity to be represented by counsel, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing.
 - (b) In the case of an indigent proposed patient, the county in which the proposed patient resides or is found shall make payment of reasonable attorney fees for counsel, as determined by the court.
 - (15) (a) (i) The court shall afford the proposed patient, the applicant, and any other person to whom notice is required to be given an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.
 - (ii) The court may, in the court's discretion, receive the testimony of any other person.
 - (iii) The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.
 - (b) The court is authorized to exclude any person not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each designated examiner to be given out of the presence of any other designated examiners.

- 2399 (c) The court shall conduct the hearing in as informal a manner as may be consistent 2400 with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient, while preserving the due process rights of the 2401 2402 proposed patient.
- 2403 (d) The court shall consider any relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah 2404 Rules of Evidence. 2405
 - (e) (i) A local mental health authority or the local mental health authority's designee or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:
- 2409 (A) the detention order;
- 2410 (B) admission notes;
- 2411 (C) the diagnosis;

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- 2412 (D) any doctors' orders;
- 2413 (E) progress notes;
- 2414 (F) nursing notes;
 - (G) medication records pertaining to the current commitment; and
- 2416 (H) whether the proposed patient has previously been civilly committed or under an 2417 order for assisted outpatient treatment.
 - (ii) The information described in Subsection (15)(e)(i) shall also be supplied to the proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.
 - (16) (a) The court shall order commitment of an adult proposed patient to a local mental health authority if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:
 - (i) the proposed patient has a mental illness;
 - (ii) because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others;
 - (iii) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;
 - (iv) there is no appropriate less-restrictive alternative to a court order of commitment;

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- 2432 (v) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs.
 - (b) (i) If, at the hearing, the court determines that the proposed patient has a mental illness but does not meet the other criteria described in Subsection (16)(a), the court may consider whether the proposed patient meets the criteria for assisted outpatient treatment under Section 62A-15-630.5.
 - (ii) The court may order the proposed patient to receive assisted outpatient treatment in accordance with Section 62A-15-630.5 if, at the hearing, the court finds the proposed patient meets the criteria for assisted outpatient treatment under Section 62A-15-630.5.
 - (iii) If the court determines that neither the criteria for commitment under Subsection (16)(a) nor the criteria for assisted outpatient treatment under Section 62A-15-630.5 are met, the court shall dismiss the proceedings after the hearing.
 - (17) (a) (i) The order of commitment shall designate the period for which the patient shall be treated.
 - (ii) If the patient is not under an order of commitment at the time of the hearing, the patient's treatment period may not exceed six months without a review hearing.
 - (iii) Upon a review hearing, to be commenced before the expiration of the previous order of commitment, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the criteria described in Subsection (16) will last for an indeterminate period.
 - (b) (i) The court shall maintain a current list of all patients under the court's order of commitment and review the list to determine those patients who have been under an order of commitment for the court designated period.
 - (ii) At least two weeks before the expiration of the designated period of any order of commitment still in effect, the court that entered the original order of commitment shall inform the appropriate local mental health authority or the local mental health authority's designee of the expiration.
 - (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local mental health authority or the local mental health authority's designee shall immediately reexamine the reasons upon which the order of commitment was based.
 - (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health

authority or the local mental health authority's designee determines that the conditions justifying commitment no longer exist, the local mental health authority or the local mental health authority's designee shall discharge the patient from involuntary commitment and immediately report the discharge to the court.

- (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment continue to exist, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).
- (c) (i) The local mental health authority or the local mental health authority's designee responsible for the care of a patient under an order of commitment for an indeterminate period shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate commitment was based.
- (ii) If the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment no longer exist, the local mental health authority or the local mental health authority's designee shall discharge the patient from the local mental health authority's or the local mental health authority designee's custody and immediately report the discharge to the court.
- (iii) If the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment continue to exist, the local mental health authority or the local mental health authority's designee shall send a written report of the findings to the court.
- (iv) A patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued under Subsection (17)(c)(iii), the reasons for the decision to continue, and that the patient has the right to a review hearing by making a request to the court.
- (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).
- (18) (a) Any patient committed as a result of an original hearing or a patient's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days after the day on which the court order is entered.
 - (b) The petition shall allege error or mistake in the findings, in which case the court

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shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient.

- 2497 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects, conduct the new hearing in the manner otherwise permitted.
- 2499 (19) The county in which the proposed patient resides or is found shall pay the costs of all proceedings under this section.

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[62A-15-632.] <u>26B-5-332.</u> Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.

- (1) When an individual is involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631(16), the conditions justifying commitment under that Subsection shall be considered to continue to exist for purposes of continued treatment under Subsection 62A-15-631(17) or conditional release under Section 62A-15-637 if the court finds that:
 - (a) the patient is still mentally ill;
- 2510 (b) there is no appropriate less restrictive alternative to a court order of involuntary commitment; and
 - (c) absent an order of involuntary commitment, the patient will likely pose a substantial danger to self or others.
 - (2) When an individual has been ordered to assisted outpatient treatment under Subsection 62A-15-630.5(14), the individual may be involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631(16) for purposes of continued treatment under Subsection 62A-15-631(17) or conditional release under Section 62A-15-637, if the court finds that:
 - (a) the patient is still mentally ill;
 - (b) there is no appropriate less-restrictive alternative to a court order of involuntary commitment; and
 - (c) based upon the patient's conduct and statements during the preceding six months, or the patient's failure to comply with treatment recommendations during the preceding six months, the court finds that absent an order of involuntary commitment, the patient is likely to pose a substantial danger to self or others.
 - (3) A patient whose treatment is continued or who is conditionally released under the

terms of this section shall be maintained in the least restrictive environment available that can provide the patient with treatment that is adequate and appropriate.

[62A-15-633.] <u>26B-5-333.</u> Persons eligible for care or treatment by federal agency -- Continuing jurisdiction of state courts.

- (1) If an individual committed pursuant to Section 62A-15-631 is eligible for care or treatment by any agency of the United States, the court, upon receipt of a certificate from a United States agency, showing that facilities are available and that the individual is eligible for care or treatment therein, may order the individual to be placed in the custody of that agency for care.
- (2) When admitted to any facility or institution operated by a United States agency, within or without this state, the individual shall be subject to the rules and regulations of that agency.
- (3) The chief officer of any facility or institution operated by a United States agency and in which the individual is hospitalized, shall, with respect to that individual, be vested with the same powers as the superintendent or director of a mental health facility, regarding detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

[62A-15-634.] 26B-5-334. Detention pending placement in custody.

Pending commitment to a local mental health authority, a patient taken into custody or ordered to be committed pursuant to this part may be detained in the patient's home, a licensed foster home, or any other suitable facility under reasonable conditions prescribed by the local mental health authority. Except in an extreme emergency, the patient may not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of criminal offenses. The local mental health authority shall take reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

[62A-15-635.] <u>26B-5-335.</u> Notice of commitment.

Whenever a patient has been temporarily, involuntarily committed to a local mental health authority under Section 62A-15-629 on the application of an individual other than the patient's legal guardian, spouse, or next of kin, the local mental health authority or a designee of the local mental health authority shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

[62A-15-636.] <u>26B-5-336.</u> Periodic review -- Discharge.

Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

[62A-15-637.] <u>26B-5-337.</u> Release of patient to receive other treatment -- Placement in more restrictive environment -- Procedures.

- (1) A local mental health authority or a designee of a local mental health authority may conditionally release an improved patient to less restrictive treatment when:
 - (a) the authority specifies the less restrictive treatment; and
 - (b) the patient agrees in writing to the less restrictive treatment.
- (2) (a) Whenever a local mental health authority or a designee of a local mental health authority determines that the conditions justifying commitment no longer exist, the local mental health authority or the designee shall discharge the patient.
- (b) If the discharged patient has been committed through judicial proceedings, the local mental health authority or the designee shall prepare a report describing the determination and shall send the report to the clerk of the court where the proceedings were held.
- (3) (a) A local mental health authority or a designee of a local mental health authority is authorized to issue an order for the immediate placement of a current patient into a more restrictive environment, if:
 - (i) the local mental health authority or a designee of a local mental health authority

has reason to believe that the patient's current environment is aggravating the patient's mental illness; or

- 2593 (ii) the patient has failed to comply with the specified treatment plan to which the patient agreed in writing.
 - (b) An order for a more restrictive environment shall:
- 2596 (i) state the reasons for the order;

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- 2597 (ii) authorize any peace officer to take the patient into physical custody and transport 2598 the patient to a facility designated by the local mental health authority;
 - (iii) inform the patient of the right to a hearing, the right to appointed counsel, and the other procedures described in Subsection 62A-15-631(14); and
 - (iv) prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued conditional release from inpatient care, copies of the order shall be delivered to:
 - (A) the patient;
 - (B) the person in whose care the patient is placed;
 - (C) the patient's counsel of record; and
 - (D) the court that entered the original order of commitment.
 - (c) If the patient was in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or the patient's representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed pursuant to Section 62A-15-631, with the exception of Subsection 62A-15-631(16), unless, by the time set for the hearing, the patient is returned to the less restrictive environment or the patient withdraws the request for a hearing, in writing.
 - (d) The court shall:
 - (i) make findings regarding whether the conditions described in Subsections (3)(a) and (b) were met and whether the patient is in the least restrictive environment that is appropriate for the patient's needs; and
 - (ii) designate, by order, the environment for the patient's care and the period for which the patient shall be treated, which may not extend beyond expiration of the original order of commitment.
 - (4) Nothing contained in this section prevents a local mental health authority or its

designee, pursuant to Section 62A-15-636, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

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[62A-15-638.] 26B-5-338. Reexamination of court order for commitment --**Procedures -- Costs.**

- (1) Any patient committed pursuant to Section 62A-15-631 is entitled to a reexamination of the order for commitment on the patient's own petition, or on that of the legal quardian, parent, spouse, relative, or friend, to the [district] court of the county in which the patient resides or is detained.
- (2) Upon receipt of the petition, the court shall conduct or cause to be conducted by a mental health commissioner proceedings in accordance with Section 62A-15-631, except that those proceedings shall not be required to be conducted if the petition is filed sooner than six months after the issuance of the order of commitment or the filing of a previous petition under this section, provided that the court may hold a hearing within a shorter period of time if good cause appears. The costs of proceedings for such judicial determination shall be paid by the county in which the patient resided or was found prior to commitment, upon certification, by the clerk of the [district] court in the county where the proceedings are held. to the county legislative body that those proceedings were held and the costs incurred.

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[62A-15-639.] 26B-5-339. Standards for care and treatment.

Every patient is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice. psychiatric nursing practice, social work practice, and the practice of clinical psychology.

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[62A-15-640.] 26B-5-340. Mechanical restraints and medication -- Clinical record.

- (1) Mechanical restraints may not be applied to a patient unless it is determined by the director or his designee to be required by the needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the patient's clinical record, under the signature of the director or his designee, and shall be reviewed regularly.
- (2) In no event shall medication be prescribed for a patient unless it is determined by a physician to be required by the patient's medical needs. Every use of a medication and the

reasons therefor shall be made a part of the patient's clinical record.

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[62A-15-641.] 26B-5-341. Restrictions and limitations -- Civil rights and privileges.

- (1) Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:
- (a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the facility;
 - (b) receive visitors; and
- (c) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity.
- (2) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division, the appropriate local mental health authority, the appropriate local substance abuse authority, or an approved treatment facility or program, whichever is most applicable to the patient.
- (3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the appropriate local substance abuse authority, an approved treatment facility or program, the division, the patient's attorney, and the court, if any, that ordered the patient's commitment or essential treatment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.
- (4) Local mental health authorities, local substance abuse authorities, and approved treatment facilities or programs shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.
- (5) Mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, created by the division, describing a patient's

2687	rights	under	Utah	law.
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(6) Notwithstanding Section 53B-17-303, an individual committed under this chapter 2688 has the right to determine the final disposition of that individual's body after death. 2689

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- [62A-15-642.] 26B-5-342. Habeas corpus.
- 2692 Any individual detained pursuant to this part is entitled to the writ of habeas corpus upon proper petition by himself or a friend, to the [district] court in the county in which he is 2693 2694 detained.

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- [62A-15-643.] 26B-5-343. Confidentiality of information and records --
- **Exceptions -- Penalty.** 2697
 - (1) All certificates, applications, records, and reports made for the purpose of this part, including those made on judicial proceedings for involuntary commitment, that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except insofar as:
 - (a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal guardian shall consent;
 - (b) disclosure may be necessary to carry out the provisions of:
 - (i) this part; or
 - (ii) Section 53-10-208.1; or
 - (c) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.
- 2711 (2) A person who knowingly or intentionally discloses any information not authorized 2712 by this section is guilty of a class B misdemeanor.

- 2714 [62A-15-644.] 26B-5-344. Additional powers of director -- Reports and records 2715 of division.
- 2716 (1) In addition to specific authority granted by other provisions of this part, the director 2717 has authority to prescribe the form of applications, records, reports, and medical certificates 2718 provided for under this part, and the information required to be contained therein, and to

adopt rules that are not inconsistent with the provisions of this part that the director finds to be reasonably necessary for the proper and efficient commitment of persons with a mental illness.

- (2) The division shall require reports relating to the admission, examination, diagnosis, release, or discharge of any patient and investigate complaints made by any patient or by any person on behalf of a patient.
- (3) A local mental health authority shall keep a record of the names and current status of all persons involuntarily committed to it under this chapter.

[62A-15-645.] 26B-5-345. Retrospective effect of provisions.

Patients who were in a mental health facility on May 8, 1951, shall be deemed to have been admitted under the provisions of this part appropriate in each instance, and their care, custody, and rights shall be governed by this part.

[62A-15-646.] 26B-5-346. Commitment and care of criminally insane.

Nothing contained in this part may be construed to alter or change the method presently employed for the commitment and care of the criminally insane as provided in Title 77, Chapter 15, Inquiry into Sanity of Defendant.

[62A-15-647.] 26B-5-347. Severability.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this part, or the application thereof to any person or circumstance, is found to be unconstitutional the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding that unconstitutionality. The Legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

[62A-15-901.] 26B-5-348. Establishment.

The Utah Forensic Mental Health Facility is hereby established and shall be located on state land on the campus of the Utah State Hospital in Provo, Utah County.

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- 2751 [62A-15-902.] 26B-5-349. Design and operation -- Security.
- 2752 (1) The forensic mental health facility is a secure treatment facility.
- 2753 (2) (a) The forensic mental health facility accommodates the following populations:
- 2754 (i) prison inmates displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility;
- 2756 (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a
 2757 mental illness at the time of the offense undergoing evaluation for mental illness under Title
 2758 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness:
 - (iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental illness or guilty with a mental illness at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who also have an intellectual disability;
 - (iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;
 - (v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and
 - (vi) persons ordered to commit themselves to the custody of the [Division of Substance Abuse and Mental Health] division for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.
 - (b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).
 - (3) The department shall:

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- (a) own and operate the forensic mental health facility;
- (b) provide and supervise administrative and clinical staff; and

2783	(c) provide security staff who are trained as psychiatric technicians.
2784	(4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate
2785	individuals to perform security functions for the state hospital.
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2787	[62A-15-801.] <u>26B-5-350.</u> Interstate compact on mental health Compact
2788	provisions.
2789	The Interstate Compact on Mental Health is hereby enacted and entered into with all
2790	other jurisdictions that legally join in the compact, which is, in form, substantially as follows:
2791	INTERSTATE COMPACT ON MENTAL HEALTH
2792	The contracting states solemnly agree that:
2793	Article I
2794	The proper and expeditious treatment of the mentally ill can be facilitated by
2795	cooperative action, to the benefit of the patients, their families, and society as a whole.
2796	Further, the party states find that the necessity of and desirability of furnishing that care and
2797	treatment bears no primary relation to the residence or citizenship of the patient but that the
2798	controlling factors of community safety and humanitarianism require that facilities and
2799	services be made available for all who are in need of them. Consequently, it is the purpose
2800	of this compact and of the party states to provide the necessary legal and constitutional basis
2801	for commitment or other appropriate care and treatment of the mentally ill under a system
2802	that recognizes the paramount importance of patient welfare and to establish the
2803	responsibilities of the party states.
2804	The appropriate authority in this state for making determinations under this compact is
2805	the director of the division or his designee.
2806	Article II
2807	As used in this compact:
2808	(1) "After-care" means care, treatment, and services provided to a patient on
2809	convalescent status or conditional release.
2810	(2) "Institution" means any hospital, program, or facility maintained by a party state or
2811	political subdivision for the care and treatment of persons with a mental illness.
2812	(3) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic
2813	and Statistical Manual of Mental Disorders, that substantially impairs a person's mental,
2814	emotional, behavioral, or related functioning to such an extent that he requires care and

treatment for his own welfare, the welfare of others, or the community.

- (4) "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact and constitutional due process requirements.
 - (5) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be sent.
 - (6) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be sent.
 - (7) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

2825 Article III

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- (1) Whenever a person physically present in any party state is in need of institutionalization because of mental illness, he shall be eligible for care and treatment in an institution in that state, regardless of his residence, settlement, or citizenship qualifications.
- (2) Notwithstanding the provisions of Subsection (1) of this article, any patient may be transferred to an institution in another state whenever there are factors, based upon clinical determinations, indicating that the care and treatment of that patient would be facilitated or improved by that action. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors to be considered include the patient's full record with due regard for the location of the patient's family, the character of his illness and its probable duration, and other factors considered appropriate by authorities in the party state and the director of the division, or his designee.
- (3) No state is obliged to receive any patient pursuant to the provisions of Subsection(2) of this article unless the sending state has:
 - (a) given advance notice of its intent to send the patient;
 - (b) furnished all available medical and other pertinent records concerning the patient;
- (c) given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient; and
 - (d) determined that the receiving state agrees to accept the patient.
- (4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he

would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and further transfer of the patient may be made as is deemed to be in the best interest of the patient, as determined by appropriate authorities in the receiving and sending states.

2852 Article IV

- (1) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive after-care or supervision, that care or supervision may be provided in the receiving state. If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of providing the patient with after-care in the receiving state. That request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge the patient would be placed, the complete medical history of the patient, and other pertinent documents.
- (2) If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state, and the appropriate authorities in the receiving state find that the best interest of the patient would be served, and if the public safety would not be jeopardized, the patient may receive after-care or supervision in the receiving state.
- (3) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment as for similar local patients.

2872 Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities both within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of that patient, he shall be detained in the state where found, pending disposition in accordance with the laws of that state.

2879 Article VI

Accredited officers of any party state, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

2883 Article VII

- (1) No person may be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state has the effect of making the person a patient of the institution in the receiving state.
- (2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs among themselves.
- (3) No provision of this compact may be construed to alter or affect any internal relationships among the departments, agencies, and officers of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities.
- (4) Nothing in this compact may be construed to prevent any party state or any of its subdivisions from asserting any right against any person, agency, or other entity with regard to costs for which that party state or its subdivision may be responsible under this compact.
- (5) Nothing in this compact may be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill, or any statutory authority under which those agreements are made.

2899 Article VIII

(1) Nothing in this compact may be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or with respect to any patient for whom he serves, except that when the transfer of a patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, a court of competent jurisdiction in the receiving state may make supplemental or substitute appointments. In that case, the court that appointed the previous guardian shall, upon being advised of the new appointment and upon the satisfactory completion of accounting and other acts as the court may require, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances.

However, in the case of any patient having settlement in the sending state, a court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian

appointed by it or to continue his power and responsibility, as it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in Subsection (1) of this article includes any guardian, trustee, legal committee, conservator, or other person or agency however denominated, who is charged by law with power to act for the person or property of a patient.

2918 Article IX

- (1) No provision of this compact except Article V applies to any person institutionalized while under sentence in a penal or correctional institution, while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness, he would be subject to incarceration in a penal or correctional institution.
- (2) To every extent possible, it shall be the policy of party states that no patient be placed or detained in any prison, jail, or lockup, but shall, with all expedition, be taken to a suitable institutional facility for mental illness.

2927 Article X

- (1) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state, either in the capacity of sending or receiving state. The compact administrator, or his designee, shall deal with all matters relating to the compact and patients processed under the compact. In this state the director of the division, or his designee shall act as the "compact administrator."
- (2) The compact administrators of the respective party states have power to promulgate reasonable rules and regulations as are necessary to carry out the terms and provisions of this compact. In this state, the division has authority to establish those rules in accordance with the Utah Administrative Rulemaking Act.
- (3) The compact administrator shall cooperate with all governmental departments, agencies, and officers in this state and its subdivisions in facilitating the proper administration of the compact and any supplementary agreement or agreements entered into by this state under the compact.

- (4) The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of this compact. In the event that supplementary agreements require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, that agreement shall have no force unless approved by the director of the department or agency under whose jurisdiction the institution or facility is operated, or whose department or agency will be charged with the rendering of services.
- (5) The compact administrator may make or arrange for any payments necessary to discharge financial obligations imposed upon this state by the compact or by any supplementary agreement entered into under the compact.

2953 Article XI

Administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility, or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that those agreements will improve services, facilities, or institutional care and treatment of persons who are mentally ill. A supplementary agreement may not be construed to relieve a party state of any obligation that it otherwise would have under other provisions of this compact.

2961 Article XII

This compact has full force and effect in any state when it is enacted into law in that state. Thereafter, that state is a party to the compact with any and all states that have legally joined.

2965 Article XIII

A party state may withdraw from the compact by enacting a statute repealing the compact. Withdrawal takes effect one year after notice has been communicated officially and in writing to the compact administrators of all other party states. However, the withdrawal of a state does not change the status of any patient who has been sent to that state or sent out of that state pursuant to the compact.

2971 Article XIV

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of the United States or the applicability to any

government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected thereby. If this compact is held to be contrary to the constitution of any party state the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[62A-15-802.] 26B-5-351. Requirement of conformity with this chapter.

All actions and proceedings taken under authority of this compact shall be in accordance with the procedures and constitutional requirements described in Part 6, Utah State Hospital and Other Mental Health Facilities.

[62A-15-1002.] 26B-5-352. Declaration for mental health treatment.

- (1) An adult who is not incapable may make a declaration of preferences or instructions regarding his mental health treatment. The declaration may include, but is not limited to, consent to or refusal of specified mental health treatment.
- (2) A declaration for mental health treatment shall designate a capable adult to act as attorney-in-fact to make decisions about mental health treatment for the declarant. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the declarant only when the declarant is incapable. The decisions shall be consistent with any instructions or desires the declarant has expressed in the declaration.
- (3) A declaration is effective only if it is signed by the declarant and two capable adult witnesses. The witnesses shall attest that the declarant is known to them, signed the declaration in their presence, appears to be of sound mind and is not under duress, fraud, or undue influence. Persons specified in Subsection 62A-15-1003(6) may not act as witnesses.
- (4) A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider and remains valid until it expires or is revoked by the declarant. The physician or provider is authorized to act in accordance with an operative declaration when the declarant has been found to be incapable. The physician or provider shall continue to obtain the declarant's informed consent to all mental health treatment decisions if the declarant is capable of providing informed consent or refusal.

- 3007 (5) (a) An attorney-in-fact does not have authority to make mental health treatment 3008 decisions unless the declarant is incapable.
 - (b) An attorney-in-fact is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant.
 - (c) Except to the extent that a right is limited by a declaration or by any federal law, an attorney-in-fact has the same right as the declarant to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.
 - (d) In exercising authority under the declaration, the attorney-in-fact shall act consistently with the instructions and desires of the declarant, as expressed in the declaration. If the declarant's desires are unknown, the attorney-in-fact shall act in what he, in good faith, believes to be the best interest of the declarant.
 - (e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment.
 - (6) (a) A declaration for mental health treatment remains effective for a period of three years or until revoked by the declarant. If a declaration for mental health treatment has been invoked and is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant is no longer incapable.
 - (b) The authority of a named attorney-in-fact and any alternative attorney-in-fact continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.
 - (7) A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a facility.

[62A-15-1003.] 26B-5-353. Physician and provider responsibilities -- Provision of services contrary to declaration -- Revocation.

(1) Upon being presented with a declaration, a physician shall make the declaration a part of the declarant's medical record. When acting under authority of a declaration, a physician shall comply with it to the fullest extent possible, consistent with reasonable

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medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider shall promptly notify the declarant and the attorney-in-fact, and document the notification in the declarant's medical record.

- (2) A physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's wishes, as expressed in a declaration for mental health treatment if:
- (a) the declarant has been committed to the custody of a local mental health authority in accordance with Part 6, Utah State Hospital and Other Mental Health Facilities; or
 - (b) in cases of emergency endangering life or health.

- (3) A declaration does not limit any authority provided in Part 6, Utah State Hospital and Other Mental Health Facilities, to take a person into custody, or admit or retain a person in the custody of a local mental health authority.
- (4) A declaration may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. That revocation is effective when the declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.
- (5) A physician who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding that a declaration is invalid.
- (6) None of the following persons may serve as an attorney-in-fact or as witnesses to the signing of a declaration:
- (a) the declarant's attending physician or mental health treatment provider, or an employee of that physician or provider;
 - (b) an employee of the division; or
- (c) an employee of a local mental health authority or any organization that contracts with a local mental health authority.
- (7) An attorney-in-fact may withdraw by giving notice to the declarant. If a declarant is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

	[62A-15-1004.] <u>26B-5-354.</u> Declaration for mental health treatment Form.
	A declaration for mental health treatment shall be in substantially the following form:
	DECLARATION FOR MENTAL HEALTH TREATMENT
	I,, being an adult of sound mind, willfully and
V	oluntarily make this declaration for mental health treatment, to be followed if it is determined
t	by a court or by two physicians that my ability to receive and evaluate information effectively
O	r to communicate my decisions is impaired to such an extent that I lack the capacity to
re	efuse or consent to mental health treatment. "Mental health treatment" means convulsive
tr	eatment, treatment with psychoactive medication, and admission to and retention in a
n	nental health facility for a period up to 17 days.
	I understand that I may become incapable of giving or withholding informed consent
f	or mental health treatment due to the symptoms of a diagnosed mental disorder. These
S	symptoms may include:
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-	
	PSYCHOACTIVE MEDICATIONS
	If I become incapable of giving or withholding informed consent for mental health
tr	reatment, my wishes regarding psychoactive medications are as follows:
_	I consent to the administration of the following medications:
_	
į	in the dosages:
	considered appropriate by my attending physician.
	approved by
	as I hereby direct:
-	I do not consent to the administration of the following medications:
_	
	CONVLIL SIVE TREATMENT

	If I become incapable of giving or withholding informed consent for mental health
tı	eatment, my wishes regarding convulsive treatment are as follows:
_	I consent to the administration of convulsive treatment of the following type:
	, the num ber of treatments to be:
	determined by my attending physician.
	approved by
	as follows:
	I do not consent to the administration of convulsive treatment.
	My reasons for consenting to or refusing convulsive treatment are as follows;
_	
	ADMISSION TO AND RETENTION IN A MENTAL HEALTH FACILITY
	If I become incapable of giving or withholding informed consent for mental health
1	eatment, my wishes regarding admission to and retention in a mental health facility are as
(ollows:
	I consent to being admitted to the following mental health facilities:
	<u> </u>
	may be retained in the facility for a period of time:
	determined by my attending physician.
	approved by
	no longer than
T	his directive cannot, by law, provide consent to retain me in a facility for more than 17 days
	ADDITIONAL REFERENCES OR INSTRUCTIONS
_	
_	
	ATTORNEY-IN-FACT
	I hereby appoint:

3135	NAME
3136	ADDRESS
3137	TELEPHONE #
3138	to act as my attorney-in-fact to make decisions regarding my mental health treatment if I
3139	become incapable of giving or withholding informed consent for that treatment.
3140	If the person named above refuses or is unable to act on my behalf, or if I revoke that
3141	person's authority to act as my attorney-in-fact, I authorize the following person to act as my
3142	alternative attorney-in-fact:
3143	NAME
3144	ADDRESS
3145	TELEPHONE #
3146	My attorney-in-fact is authorized to make decisions which are consistent with the
3147	wishes I have expressed in this declaration. If my wishes are not expressed, my
3148	attorney-in-fact is to act in good faith according to what he or she believes to be in my best
3149	interest.
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3151	(Signature of Declarant/Date)
3152	AFFIRMATION OF WITNESSES
3153	We affirm that the declarant is personally known to us, that the declarant signed or
3154	acknowledged the declarant's signature on this declaration for mental health treatment in our
3155	presence, that the declarant appears to be of sound mind and does not appear to be under
3156	duress, fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact
3157	by this document, the attending physician, an employee of the attending physician, an
3158	employee of [the Division of Substance Abuse and Mental Health within] the Department of
3159	Health and Human Services, an employee of a local mental health authority, or an employee
3160	of any organization that contracts with a local mental health authority.
3161	Witnessed By:
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3164	(Signature of Witness/Date) (Printed Name of Witness)
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3167 (Signature of Witness/Date) (Printed Name of Witness) ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT 3168 I accept this appointment and agree to serve as attorney-in-fact to make decisions 3169 3170 about mental health treatment for the declarant. I understand that I have a duty to act 3171 consistently with the desires of the declarant as expressed in the declaration. I understand 3172 that this document gives me authority to make decisions about mental health treatment only 3173 while the declarant is incapable as determined by a court or two physicians. I understand 3174 that the declarant may revoke this appointment, or the declaration, in whole or in part, at any 3175 time and in any manner, when the declarant is not incapable. 3176 3177 3178 (Signature of Attorney-in-fact/Date) (Printed name) 3179 3180 3181 (Signature of Alternate Attorney-in-fact/Date) (Printed name) 3182 NOTICE TO PERSON MAKING A 3183 DECLARATION FOR MENTAL HEALTH TREATMENT 3184 This is an important legal document. It is a declaration that allows, or disallows, 3185 mental health treatment. Before signing this document, you should know that: 3186 (1) this document allows you to make decisions in advance about three types of 3187 mental health treatment: psychoactive medication, convulsive therapy, and short-term (up to 3188 17 days) admission to a mental health facility; 3189 (2) the instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of otherwise making treatment decisions. 3190 3191 Otherwise, you will be considered capable to give or withhold consent for treatment; 3192 (3) you may also appoint a person as your attorney-in-fact to make these treatment 3193 decisions for you if you become incapable. The person you appoint has a duty to act 3194 consistently with your desires as stated in this document or, if not stated, to make decisions 3195 in accordance with what that person believes, in good faith, to be in your best interest. For 3196 the appointment to be effective, the person you appoint must accept the appointment in 3197 writing. The person also has the right to withdraw from acting as your attorney-in-fact at any 3198 time;

	Working Draft For Discussion Purposes Only
3199	(4) this document will continue in effect for a period of three years unless you become
3200	incapable of participating in mental health treatment decisions. If this occurs, the directive
3201	will continue in effect until you are no longer incapable;
3202	(5) you have the right to revoke this document in whole or in part, or the appointment
3203	of an attorney-in-fact, at any time you have not been determined to be incapable. YOU MAY
3204	NOT REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE CONSIDERED
3205	INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is
3206	communicated to your attending physician or other provider; and

(6) if there is anything in this document that you do not understand, you should ask an attorney to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

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Part 4. Commitment of Persons Under Age 18

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- [62A-15-701.] 26B-5-401. Definitions.
- 3215 [As] In addition to the definitions in Section 26B-5-301, as used in this part:
- (1) "Child" means a person under 18 years of age. 3216
- 3217 (2) "Commit" and "commitment" mean the transfer of physical custody in accordance 3218 with the requirements of this part.
- 3219 (3) "Legal custody" means:
 - (a) the right to determine where and with whom the child shall live;
- 3221 (b) the right to participate in all treatment decisions and to consent or withhold 3222 consent for treatment in which a constitutionally protected liberty or privacy interest may be 3223 affected, including antipsychotic medication, electroshock therapy, and psychosurgery; and
 - (c) the right to authorize surgery or other extraordinary medical care.
- 3225 (4) "Physical custody" means:
 - (a) placement of a child in any residential or inpatient setting;
- 3227 (b) the right to physical custody of a child;
- (c) the right and duty to protect the child; and 3228
- 3229 (d) the duty to provide, or insure that the child is provided with, adequate food, 3230 clothing, shelter, and ordinary medical care.

- 3231 (5) "Residential" means any out-of-home placement made by a local mental health 3232 authority, but does not include out-of-home respite care.
 - (6) "Respite care" means temporary, periodic relief provided to parents or quardians from the daily care of children with serious emotional disorders for the limited time periods designated by the division.

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[62A-15-702.] 26B-5-402. Treatment and commitment of minors in the public mental health system.

A child is entitled to due process proceedings, in accordance with the requirements of this part, whenever the child:

- (1) may receive or receives services through the public mental health system and is placed, by a local mental health authority, in a physical setting where his liberty interests are restricted, including residential and inpatient placements; or
- (2) receives treatment in which a constitutionally protected privacy or liberty interest may be affected, including the administration of antipsychotic medication, electroshock therapy, and psychosurgery.

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[62A-15-703.] 26B-5-403. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

- (1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.
- (2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.
 - (3) The neutral and detached fact finder who conducts the inquiry:
 - (a) shall be a designated examiner, as defined in Section 62A-15-602; and
- 3261 (b) may not profit, financially or otherwise, from the commitment or physical 3262 placement of the child in that setting.

- 3263 (4) Upon determination by a fact finder that the following circumstances clearly exist, 3264 the fact finder may order that the child be committed to the physical custody of a local mental 3265 health authority:
 - (a) the child has a mental illness, as defined in Section 62A-15-602;
- 3267 (b) the child demonstrates a reasonable fear of the risk of substantial danger to self or 3268 others;
- 3269 (c) the child will benefit from care and treatment by the local mental health authority; 3270 and
 - (d) there is no appropriate less-restrictive alternative.
- 3272 (5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible and in a physical setting that is not likely to have a harmful effect on the child.
- 3275 (b) The child, the child's parent or legal guardian, the petitioner, and a representative 3276 of the appropriate local mental health authority:
 - (i) shall receive informal notice of the date and time of the proceeding; and
 - (ii) may appear and address the petition for commitment.
- 3279 (c) The neutral and detached fact finder may, in the fact finder's discretion, receive the testimony of any other person.
 - (d) The fact finder may allow a child to waive the child's right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.
 - (e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:
- 3288 (i) the petition for commitment;
- 3289 (ii) the admission notes;
- 3290 (iii) the child's diagnosis;
- 3291 (iv) physicians' orders;
- 3292 (v) progress notes;

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- 3293 (vi) nursing notes; and
- 3294 (vii) medication records.

- (f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.
- (g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.
- (ii) At the conclusion of the hearing and subsequently in writing, when a decision for commitment is made, the neutral and detached fact finder shall inform the child and the child's parent or legal guardian of that decision and of the reasons for ordering commitment.
- (iii) The neutral and detached fact finder shall state in writing the basis of the decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.
- (6) A child may be temporarily committed for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health authority in accordance with the procedures described in Section 62A-15-629 and upon satisfaction of the risk factors described in Subsection (4). A child who is temporarily committed shall be released at the expiration of the 72 hours unless the procedures and findings required by this section for the commitment of a child are satisfied.
- (7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.
- (8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this

section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

- (9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.
- (10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition or on petition of the child's parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).
- (b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.
- (c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:
 - (i) the original petition for commitment;
- 3352 (ii) admission notes;
- 3353 (iii) diagnosis;

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- 3354 (iv) physicians' orders;
- 3355 (v) progress notes:
- 3356 (vi) nursing notes; and
- 3357 (vii) medication records.
- 3358 (d) Both the neutral and detached fact finder and the designated examiner appointed

for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

- (e) The child, the child's parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.
- (11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.
- (12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to the child's parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.
- (b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating the child's mental illness, or increasing the

risk of harm to self or others.

- (c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport the child to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, the child's parent or legal guardian, the administrator of the more restrictive environment, or the administrator's designee, and the child's former treatment provider or facility.
- (d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or the child's representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:
- (i) the less restrictive environment in which the child has been placed is exacerbating the child's mental illness or increasing the risk of harm to self or others; or
- (ii) the less restrictive environment in which the child has been placed is not exacerbating the child's mental illness or increasing the risk of harm to self or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.
- (e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.
- (13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 62A-15-705. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.
- (14) Even though a child has been committed to the physical custody of a local mental health authority under this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment that may affect a

constitutionally protected liberty or privacy interest is administered. Those treatments include
but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

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- [62A-15-704.] 26B-5-404. Invasive treatment -- Due process proceedings.
- 3427 (1) For purposes of this section, "invasive treatment" means treatment in which a 3428 constitutionally protected liberty or privacy interest may be affected, including antipsychotic 3429 medication, electroshock therapy, and psychosurgery.
 - (2) The requirements of this section apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.
 - (3) (a) The division shall promulgate rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:
 - (i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);
 - (ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and
 - (iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).
 - (b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

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- 3452 [62A-15-705.] 26B-5-405. Commitment proceedings in juvenile court -- Criteria -- Custody.
- 3454 (1) (a) Subject to Subsection (1)(b), a commitment proceeding for a child may be

3455	commenced by filing a written application with the juvenile court of the county in which the
3456	child resides or is found, in accordance with the procedures described in Section
3457	62A-15-631.

- (b) A commitment proceeding under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.
- (2) The juvenile court shall order commitment to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, the juvenile court finds by clear and convincing evidence that:
 - (a) the child has a mental illness, as defined in Section 62A-15-602;
 - (b) the child demonstrates a risk of harm to the child or others;
- 3466 (c) the child is experiencing significant impairment in the child's ability to perform 3467 socially;
 - (d) the child will benefit from the proposed care and treatment; and
 - (e) there is no appropriate less restrictive alternative.
- 3470 (3) The juvenile court may not commit a child under Subsection (1) directly to the 3471 Utah State Hospital.
 - (4) The local mental health authority has an affirmative duty to:
 - (a) conduct periodic reviews of children committed to the local mental health authority's custody in accordance with this section; and
 - (b) release any child who has sufficiently improved so that the local mental health authority, or the local mental authority's designee, determines that commitment is no longer appropriate.
 - (5) If a child is committed to the custody of a local mental health authority, or the local mental health authority's designee, by the juvenile court, the local mental health authority, or the local mental health authority's designee, shall give the juvenile court written notice of the intention to release the child not fewer than five days before the day on which the child is released.

[62A-15-706.] <u>26B-5-406.</u> Parent advocate.

The division shall establish the position of a parent advocate to assist parents of children with a mental illness who are subject to the procedures required by this part.

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3487	[62A-15-707.] 26B-5-407. Confidentiality of information and records
3488	Exceptions Penalty.
3489	(1) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records
3490	Access and Management Act, all certificates, applications, records, and reports made for the
3491	purpose of this part that directly or indirectly identify a patient or former patient or an
3492	individual whose commitment has been sought under this part, shall be kept confidential and
3493	may not be disclosed by any person except as follows:
3494	(a) the individual identified consents after reaching 18 years of age;
3495	(b) the child's parent or legal guardian consents;
3496	(c) disclosure is necessary to carry out any of the provisions of this part; or
3497	(d) a court may direct, upon its determination that disclosure is necessary for the
3498	conduct of proceedings before it, and that failure to make the disclosure would be contrary to
3499	the public interest.
3500	(2) A person who violates any provision of this section is guilty of a class B
3501	misdemeanor.
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3503	[62A-15-708.] <u>26B-5-408.</u> Mechanical restraints Clinical record.
3504	Mechanical restraints may not be applied to a child unless it is determined, by the
3505	local mental health authority or its designee in conjunction with the child's current treating
3506	mental health professional, that they are required by the needs of that child. Every use of a
3507	mechanical restraint and the reasons for that use shall be made a part of the child's clinical
3508	record, under the signature of the local mental health authority, its designee, and the child's
3509	current treating mental health professional.
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3511	[62A-15-709.] <u>26B-5-409.</u> Habeas corpus.
3512	Any child committed in accordance with Section 62A-15-703 is entitled to a writ of
3513	habeas corpus upon proper petition by himself or next of friend to the [district] court in the
3514	district in which he is detained.
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3516	[62A-15-710.] 26B-5-410. Restrictions and limitations Civil rights and
3517	privileges.

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(1) Subject to the specific rules of the division, and except to the extent that the local

mental health authority or its designee, in conjunction with the child's current treating mental health professional, determines that it is necessary for the welfare of the person to impose restrictions, every child committed to the physical custody of a local mental health authority under Section 62A-15-703 is entitled to:

- (a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside of the facility;
 - (b) receive visitors; and

- (c) exercise his civil rights.
- (2) When any right of a child is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the child's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division.
- (3) Notwithstanding any limitations authorized under this section on the right of communication, each child committed to the physical custody of a local mental health authority is entitled to communicate by sealed mail with his attorney, the local mental health authority, its designee, his current treating mental health professional, and the court, if commitment was court ordered. In no case may the child be denied a visit with the legal counsel or clergy of his choice.
- (4) Each local mental health authority shall provide appropriate and reasonable means and arrangements for informing children and their parents or legal guardians of their rights as provided in this part, and for assisting them in making and presenting requests for release.
- (5) All local mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

[62A-15-711.] <u>26B-5-411.</u> Standards for care and treatment.

Every child is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

[62A-15-712.] <u>26B-5-412.</u> Responsibilities of the <u>division</u> [Division of Substance Abuse and Mental Health].

- 3551 (1) The division shall ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.
- 3553 (2) Because the division must, under Section 62A-15-103, contract with, review, 3554 approve, and oversee local mental health authority plans, and withhold funds from local 3555 mental health authorities and public and private providers for contract noncompliance or 3556 misuse of public funds, the division shall:
- 3557 (a) require each local mental health authority to submit its plan to the division by May 3558 1 of each year; and
 - (b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider.
 - (3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether or not:
 - (a) public funds allocated to local mental health authorities are consistent with services rendered and outcomes reported by it or its contract provider; and
 - (b) each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.
 - (4) The Legislature may refuse to appropriate funds to the division if the division fails to comply with the procedures and requirements of this section.

[62A-15-713.] <u>26B-5-413.</u> Contracts with local mental health authorities -- Provisions.

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

- (1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;
- 3581 (2) in addition to the requirements described in Title 51, Chapter 2a, Accounting
 3582 Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act,

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- 3584 (a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of 3585 3586 officers, directors, and specified employees of the private contract provider, to assure the 3587 state that no personal benefit is gained from travel or other expenses; and
 - (b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local mental health authority or contract provider at issue:
 - (3) the local mental health authority or its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;
 - (4) each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;
 - (5) requested information and outcome data will be provided to the division in the manner and within the timelines defined by the division;
 - (6) all audit reports by state or county persons or entities concerning the local mental health authority or its contract provider shall be provided to the executive director of the department, the local mental health authority, and members of the contract provider's governing board; and
 - (7) the local mental health authority or its contract provider will offer and provide mental health services to residents who are indigent and who meet state criteria for serious and persistent mental illness or severe emotional disturbance.

[62A-1-108.5.] 26B-5-414. Mental illness and intellectual disability examinations -- Responsibilities of the department.

- (1) In accomplishing the department's duties to conduct a competency evaluation under Title 77, Utah Code of Criminal Procedure, and a juvenile competency evaluation under Section 80-6-402, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature.
- 3612 (2) When the department is ordered by a court to conduct a competency evaluation. 3613 the department shall designate a forensic evaluator, selected under Subsection (4), to 3614 evaluate the defendant in the defendant's current custody or status.

3615	(3) When the department is ordered by the juvenile court to conduct a juvenile
3616	competency evaluation under Section 80-6-402, the department shall:
3617	(a) designate an examiner selected pursuant to Subsection (4) to evaluate the

- 3617 (a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor; 3618 and
 - (b) upon a finding of good cause and order of the court, designate a second examiner to evaluate the minor.
 - (4) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons to conduct competency evaluations and juvenile competency evaluations under Subsections (2) and (3)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6a, Utah Procurement Code.
 - (5) Nothing in this section prohibits the department, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (4) to contract with the department to conduct the evaluation. In selecting that person, the criteria of the department established under Subsection (4) and the provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

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Part 5. Essential Treatment and Intervention.

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3635 [62A-15-1202.] <u>26B-5-501.</u> Definitions.

- 3636 As used in this part:
- 3637 (1) "Emergency, life saving treatment" means treatment that is:
- (a) provided at a licensed health care facility or licensed human services program;
- 3639 (b) provided by a licensed health care professional;
- 3640 (c) necessary to save the life of the patient; and
- (d) required due to the patient's:
- 3642 (i) use of an illegal substance; or
- 3643 (ii) excessive use or misuse of a prescribed medication.
- 3644 (2) "Essential treatment examiner" means:
- 3645 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specifically qualified by training or experience in the diagnosis of substance use disorder;

3647	or
3648	(b) a licensed mental health professional designated by the division as specially
3649	qualified by training and who has at least five years' continual experience in the treatment of
3650	substance use disorder.
3651	(3) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child,
3652	or sibling of an individual.
3653	(4) "Serious harm" means the individual, due to substance use disorder, is at serious
3654	risk of:
3655	(a) drug overdose;
3656	(b) suicide;
3657	(c) serious bodily self-injury;
3658	(d) serious bodily injury because the individual is incapable of providing the basic
3659	necessities of life, including food, clothing, or shelter; or
3660	(e) causing or attempting to cause serious bodily injury to another individual.
3661	(5) "Substance use disorder" means the same as that term is defined in the current
3662	edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
3663	American Psychiatric Association.
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3665	[62A-15-1201.] <u>26B-5-502.</u> Statement of legislative intent.
3666	To address the serious public health crisis of substance use disorder related deaths
3667	and life-threatening opioid addiction, and to allow and enable caring relatives to seek
3668	essential treatment and intervention, as may be necessary, on behalf of a sufferer of a
3669	substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.
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3671	[62A-15-1203.] <u>26B-5-503.</u> Petition for essential treatment Contents
3672	Commitment to pay.
3673	(1) A relative seeking essential treatment and intervention for a sufferer of a
3674	substance use disorder may file a petition with the [district] court of the county in which the
3675	sufferer of the substance use disorder resides or is found.
3676	(2) The petition shall include:
3677	(a) the respondent's:
3678	(i) legal name;

3679	(ii) date of birth, if known;
3680	(iii) social security number, if known; and
3681	(iv) residence and current location, if known;
3682	(b) the petitioner's relationship to the respondent;
3683	(c) the name and residence of the respondent's legal guardian, if any and if known;
3684	(d) a statement that the respondent:
3685	(i) is suffering from a substance use disorder; and
3686	(ii) if not treated for the substance use disorder presents a serious harm to self or
3687	others;
3688	(e) the factual basis for the statement described in Subsection (2)(d); and
3689	(f) at least one specified local substance abuse authority or approved treatment
3690	facility or program where the respondent may receive essential treatment.
3691	(3) Any petition filed under this section:
3692	(a) may be accompanied by proof of health insurance to provide for the respondent's
3693	essential treatment;
3694	(b) shall be accompanied by a binding commitment to pay, signed by the petitioner or
3695	another individual, obligating the petitioner or other individual to pay all treatment costs
3696	beyond those covered by the respondent's health insurance policy for court-ordered essential
3697	treatment for the respondent; and
3698	(c) may be accompanied by documentation of emergency, life saving treatment
3699	provided to the respondent.
3700	(4) Nothing in this section alters the contractual relationship between a health insurer
3701	and an insured individual.
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3703	[62A-15-1204.] <u>26B-5-504.</u> Criteria for essential treatment and intervention.
3704	A [district] court shall order an individual to undergo essential treatment for a
3705	substance use disorder when the [district] court determines by clear and convincing evidence
3706	that the individual:
3707	(1) suffers from a substance use disorder;
3708	(2) can reasonably benefit from the essential treatment;
3709	(3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
3710	(4) presents a serious harm to self or others.

3711	[62A-15-1205.] 26B-5-505. Proceeding for essential treatment Duties of court
3712	Disposition.
3713	(1) A [district] court shall review the assertions contained in the verified petition
3714	described in Section 62A-15-1203.
3715	(2) If the court determines that the assertions, if true, are sufficient to order the
3716	respondent to undergo essential treatment, the court shall:
3717	(a) set an expedited date for a time-sensitive hearing to determine whether the court
3718	should order the respondent to undergo essential treatment for a substance use disorder;
3719	(b) provide notice of:
3720	(i) the contents of the petition, including all assertions made;
3721	(ii) a copy of any order for detention or examination;
3722	(iii) the date of the hearing;
3723	(iv) the purpose of the hearing;
3724	(v) the right of the respondent to be represented by legal counsel; and
3725	(vi) the right of the respondent to request a preliminary hearing before submitting to
3726	an order for examination;
3727	(c) provide notice to:
3728	(i) the respondent;
3729	(ii) the respondent's guardian, if any; and
3730	(iii) the petitioner; and
3731	(d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be
3732	examined before the hearing date:
3733	(i) by two essential treatment examiners; or
3734	(ii) by one essential treatment examiner, if documentation before the court
3735	demonstrates that the respondent received emergency, life saving treatment:
3736	(A) within 30 days before the day on which the petition for essential treatment and
3737	intervention was filed; or
3738	(B) during the pendency of the petition for essential treatment and intervention.
3739	(3) An essential treatment examiner shall examine the respondent to determine:
3740	(a) whether the respondent meets each of the criteria described in Section
3741	62A-15-1204;
3742	(b) the severity of the respondent's substance use disorder, if any:

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	WORKING DRAFT FOR DISCUSSION PURPOSES ONLY
3743	(c) what forms of treatment would substantially benefit the respondent, if the
3744	examiner determines that the respondent has a substance use disorder; and
3745	(d) the appropriate duration for essential treatment, if essential treatment is
3746	recommended.
3747	(4) An essential treatment examiner shall certify the examiner's findings to the court
3748	within 24 hours after completion of the examination.
3749	(5) The court may, based upon the findings of an essential treatment examiner,
3750	terminate the proceedings and dismiss the petition.
3751	(6) The parties may, at any time, make a binding stipulation to an essential treatment
3752	plan and submit that plan to the court for court order.
3753	(7) At the hearing, the petitioner and the respondent may testify and may
3754	cross-examine witnesses.
3755	(8) If, upon completion of the hearing, the court finds that the criteria in Section
3756	62A-15-1204 are met, the court shall order essential treatment for an initial period that:
3757	(a) does not exceed 360 days, subject to periodic review as provided in Section
3758	62A-15-1206; and
3759	(b) (i) is recommended by an essential treatment examiner; or
3760	(ii) is otherwise agreed to at the hearing.
3761	(9) The court shall designate the facility for the essential treatment, as:
3762	(a) described in the petition;
3763	(b) recommended by an essential treatment examiner; or
3764	(c) agreed to at the hearing.
3765	(10) The court shall issue an order that includes the court's findings and the reasons
3766	for the court's determination.
3767	(11) The court may order the petitioner to be the respondent's personal
3768	representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's
3769	essential treatment.
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3771	[62A-15-1205.5.] 26B-5-506. Failure to comply with court order.

[62A-15-1205.5.] <u>26B-5-506.</u> Failure to comply with court order.

(1) The provisions of this section apply after a respondent has been afforded full due process rights, as provided in this Essential Treatment and Intervention Act, including notice, an opportunity to respond and appear at a hearing, and, as applicable, the court's finding that

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3775	the evidence meets the clear and convincing standard, as described in Section 62A-15-1204
3776	for a court to order essential treatment and intervention.

- 3777 (2) When a respondent fails to comply with a court order issued under Subsection 3778 62A-15-1205(2)(d) or (10), the court may:
 - (a) find the respondent in contempt under Subsection 78B-6-301(5); and
 - (b) issue a warrant of commitment under Section 78B-6-312.
 - (3) When a peace officer executes a warrant issued under this section, the officer shall take the respondent into protective custody and transport the respondent to the location specified by the court.
 - (4) Notwithstanding Subsection (3), if a peace officer determines through the peace officer's experience and training that taking the respondent into protective custody or transporting the respondent would increase the risk of substantial danger to the respondent or others, a peace officer may exercise discretion to not take the respondent into custody or transport the respondent, as permitted by policies and procedures established by the peace officer's law enforcement agency and any applicable federal or state statute, or case law.

3791 [62A-15-1206.] 26B-5-507. Periodic review -- Discharge.

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A local substance abuse authority or an approved treatment facility or program that provides essential treatment shall:

- (1) at least every 90 days after the day on which a patient is admitted, unless a court orders otherwise, examine or cause to be examined a patient who has been ordered to receive essential treatment;
- (2) notify the patient and the patient's personal representative or guardian, if any, of the substance and results of the examination;
- (3) discharge an essential treatment patient if the examination determines that the conditions justifying essential treatment and intervention no longer exist; and
- (4) after discharging an essential treatment patient, send a report describing the reasons for discharge to the clerk of the court where the proceeding for essential treatment was held and to the patient's personal representative or guardian, if any.

[62A-15-1207.] 26B-5-508. Seventy-two-hour emergency treatment pending a final court order.

- (1) A court may order a respondent to be hospitalized for up to 72 hours if:
- 3808 (a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section 62A-15-1204; and
 - (b) the court finds by clear and convincing evidence that the respondent presents an imminent threat of serious harm to self or others as a result of a substance use disorder.
 - (2) An individual who is admitted to a hospital under this section shall be released from the hospital within 72 hours after admittance, unless a treating physician or essential treatment examiner determines that the individual continues to pose an imminent threat of serious harm to self or others.
 - (3) If a treating physician or essential treatment examiner makes the determination described in Subsection (2), the individual may be detained for as long as the threat of serious harm remains imminent, but not more than 10 days after the day on which the individual was hospitalized, unless a court orders otherwise.
 - (4) A treating physician or an essential treatment examiner shall, as frequently as practicable, examine an individual hospitalized under this section and release the individual if it is determined that a threat of imminent serious harm no longer exists.

[62A-15-1207.5.] <u>26B-5-509.</u> Emergency, life saving treatment -- Temporary personal representative.

- (1) When an individual receives emergency, life saving treatment:
- (a) a licensed health care professional, at the health care facility where the emergency, life saving treatment is provided, may ask the individual who, if anyone, may be contacted and informed regarding the individual's treatment;
- (b) a treating physician may hold the individual in the health care facility for up to 48 hours, if the treating physician determines that the individual poses a serious harm to self or others; and
- (c) a relative of the individual may petition a court to be designated as the individual's personal representative, described in 45 C.F.R. Sec. 164.502(g), for the limited purposes of the individual's medical and mental health care related to a substance use disorder.
 - (2) The petition described in Subsection (1)(c) shall include:
- (a) the respondent's:
 - (i) legal name;

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3839	(ii) date of birth, if known;
3840	(iii) social security number, if known; and
3841	(iv) residence and current location, if known;
3842	(b) the petitioner's relationship to the respondent;
3843	(c) the name and residence of the respondent's legal guardian, if any and if known;
3844	(d) a statement that the respondent:
3845	(i) is suffering from a substance use disorder; and
3846	(ii) has received, within the last 72 hours, emergency, life saving treatment;
3847	(e) the factual basis for the statement described in Subsection (2)(d); and
3848	(f) the name of any other individual, if any, who may be designated as the
3849	respondent's personal representative.
3850	(3) A court shall grant a petition for designation as a personal representative, ex
3851	parte, if it appears from the petition for designation as a court-designated personal
3852	representative that:
3853	(a) the respondent is suffering from a substance use disorder;
3854	(b) the respondent received emergency, life saving treatment within 10 days before
3855	the day on which the petition for designation as a personal representative is filed;
3856	(c) the petitioner is a relative of the respondent; and
3857	(d) no other individual is otherwise designated as the respondent's personal
3858	representative.
3859	(4) When a court grants, ex parte, a petition for designation as a personal
3860	representative, the court:
3861	(a) shall provide notice to the respondent;
3862	(b) shall order the petitioner to be the respondent's personal representative for 10
3863	days after the day on which the court designates the petitioner as the respondent's persona
3864	representative; and
3865	(c) may extend the duration of the order:
3866	(i) for good cause shown, after the respondent has been notified and given a proper
3867	and sufficient opportunity to respond; or
3868	(ii) if the respondent consents to an extension.
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3870	[62A-15-1208.] <u>26B-5-510.</u> Confidentiality.

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3871	(1) The purpose of [Part 12, Essential Treatment and Intervention Act,] this part is to
3872	provide a process for essential treatment and intervention to save lives, preserve families,
3873	and reduce substance use disorder, including opioid addiction.
3874	(2) An essential treatment petition and any other document filed in connection with
3875	the petition for essential treatment is confidential and protected.
3876	(3) A hearing on an essential treatment petition is closed to the public, and only the
3877	following individuals and their legal counsel may be admitted to the hearing:
3878	(a) parties to the petition;
3879	(b) the essential treatment examiners who completed the court-ordered examination
3880	under Subsection 62A-15-1205(3);
3881	(c) individuals who have been asked to give testimony; and
3882	(d) individuals to whom notice of the hearing is required to be given under Subsection
3883	62A-15-1205(2)(c).
3884	(4) Testimony, medical evaluations, the petition, and other documents directly related
3885	to the adjudication of the petition and presented to the court in the interest of the respondent
3886	may not be construed or applied as an admission of guilt to a criminal offense.
3887	(5) A court may, if applicable, enforce a previously existing warrant for a respondent
3888	or a warrant for a charge that is unrelated to the essential treatment petition filed under this
3889	part.
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3891	[62A-15-1209.] <u>26B-5-511.</u> Essential treatment for substance use disorder
3892	Rights of patient.
3893	All applicable rights guaranteed to a patient by Sections 62A-15-641 and 62A-15-642
3894	shall be guaranteed to an individual who is ordered to undergo essential treatment for a
3895	substance use disorder.
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3897	Part 6. Mental Health Intervention and Treatment Programs.
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3899	[62A-17-102.] <u>26B-5-601.</u> Definitions.

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As used in this [chapter] part:

Communications Commission for consumer access to community information and referral

(1) "211" means the abbreviated dialing code assigned by the Federal

3903	services.
3904	(2) "ACT team personnel" means a licensed psychiatrist or mental health therapist, or
3905	another individual, as determined by the division, who is part of an ACT team.
3906	[(2)] (3) "Approved 211 service provider" means a public or nonprofit agency or
3907	organization designated by the department to provide 211 services.
3908	(4) "Assertive community treatment team" or "ACT team" means a mobile team of
3909	medical and mental health professionals that provides assertive community outreach
3910	treatment and, based on the individual circumstances of each case, coordinates with other
3911	medical providers and appropriate community resources.
3912	(5) (a) "Assertive community treatment" means mental health services and on-site
3913	intervention that a person renders to an individual with a mental illness.
3914	(b) "Assertive community treatment" includes the provision of assessment and
3915	treatment plans, rehabilitation, support services, and referrals to other community resources.
3916	(6) "Mental health therapist" means the same as that term is defined in Section
3917	<u>58-60-102.</u>
3918	(7) "Mental illness" means the same as that term is defined in Section 62A-15-602.
3919	(8) "Psychiatrist" means the same as that term is defined in Section 62A-15-1601.
3920	[(3)] (9) (a) "Utah 211" means an information and referral system that:
3921	(i) maintains a database of:
3922	(A) providers of health and human services; and
3923	(B) volunteer opportunities and coordinators throughout the state;
3924	(ii) assists individuals, families, and communities at no cost in identifying,
3925	understanding, and accessing the providers of health and human services; and
3926	(iii) works collaboratively with state agencies, local governments, community-based
3927	organizations, not-for-profit organizations, organizations active in disaster relief, and
3928	faith-based organizations.
3929	(b) "Utah 211" does not mean service provided by 911 and first responders.
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3931	[62A-17-103.] <u>26B-5-602.</u> Designated approved 211 service provider
3932	Department responsibilities.
3933	(1) The department shall designate an approved 211 service provider to provide
3934	information to Utah citizens about health and human services available in the citizen's

3935	community.
3936	(2) Only a service provider approved by the department may provide 211 telephone
3937	services in this state.
3938	(3) The department shall approve a 211 service provider after considering the
3939	following:
3940	(a) the ability of the proposed 211 service provider to meet the national 211 standards
3941	recommended by the Alliance of Information and Referral Systems;
3942	(b) the financial stability of the proposed 211 service provider;
3943	(c) the community support for the proposed 211 service provider;
3944	(d) the relationship between the proposed 211 service provider and other information
3945	and referral services; and
3946	(e) other criteria as the department considers appropriate.
3947	(4) The department shall coordinate with the approved 211 service provider and other
3948	state and local agencies to ensure the joint development and maintenance of a statewide
3949	information database for use by the approved 211 service provider.
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3951	[62A-17-104.] <u>26B-5-603.</u> Utah 211 created Responsibilities.
3952	(1) The designated 211 service provider described in Section 62A-17-102 shall be
3953	known as Utah 211.
3954	(2) Utah 211 shall, as appropriations allow:
3955	(a) by 2014:
3956	(i) provide the services described in this Subsection (2) 24 hours a day, seven days a
3957	week;
3958	(ii) abide by the key standards for 211 programs, as specified in the Standards for
3959	Professional Information and Referral Requirements for Alliance of Information Systems
3960	Accreditation and Operating 211 systems; and
3961	(iii) be a point of entry for disaster-related information and referral;
3962	(b) track types of calls received and referrals made;
3963	(c) develop, coordinate, and implement a statewide information and referral system
3964	that integrates existing community-based structures with state and local agencies;
3965	(d) provide information relating to:
3966	(i) health and human services; and

3967	(ii) volunteer opportunities;
3968	(e) create an online, searchable database to provide information to the public about
3969	the health and human services provided by public or private entities throughout the state, and
3970	ensure that:
3971	(i) the material on the searchable database is indexed:
3972	(A) geographically to inform an individual about the health and human services
3973	provided in the area where the individual lives; and
3974	(B) by type of service provided; and
3975	(ii) the searchable database contains links to the Internet sites of any local provider of
3976	health and human services, if possible, and include:
3977	(A) the name, address, and phone number of organizations providing health and
3978	human services in a county; and
3979	(B) a description of the type of services provided;
3980	(f) be responsible, in collaboration with state agencies, for raising community
3981	awareness about available health and human services; and
3982	(g) host meetings on a quarterly basis until calendar year 2014, and on a biannual
3983	basis beginning in 2014, to seek input and guidance from state agencies, local governments,
3984	community-based organizations, not-for-profit organizations, and faith-based organizations.
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3986	[62A-17-105.] <u>26B-5-604.</u> Other state agencies and local governments.
3987	(1) A state agency or local government institution that provides health and human
3988	services, or a public or private entity receiving state-appropriated funds to provide health and
3989	human services, shall provide Utah 211 with information, in a form determined by Utah 211,
3990	about the services the agency or entity provides for inclusion in the statewide information and
3991	referral system.
3992	(2) A state agency or local government institution that provides health and human
3993	services may not establish a new public telephone line or hotline, other than an emergency
3994	first responder hotline, to provide information or referrals unless the agency or institution first:
3995	(a) consults with Utah 211 about using the existing 211 to provide access to the
3996	information or referrals; and

(b) assesses whether a new line or the existing 211 program would be more cost

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effective.

- 3999 (3) Nothing in this section prohibits a state agency or local government institution from starting a public telephone line or hotline in an emergency situation.
 - (4) State agencies, local governments, community-based organizations, not-for-profit organizations, faith-based organizations, and businesses that engage in providing human services may contract with Utah 211 to provide specialized projects, including:
 - (a) public health campaigns;
 - (b) seasonal community services; and
 - (c) expanded point of entry services.

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[62A-17-106.] <u>26B-5-605.</u> Immunity from liability.

- 4009 (1) Except as provided in Subsection (2), Utah 211, its employees, directors, officers, and information specialists are not liable to any person in a civil action for injury or loss as a result of an act or omission of Utah 211, its employees, directors, officers, or information specialists, in connection with:
 - (a) developing, adopting, implementing, maintaining, or operating the Utah 211 system;
 - (b) making Utah 211 available for use by the public; or
 - (c) providing 211 services.
- 4017 (2) Utah 211, its employees, directors, officers, and information specialists shall be
 4018 liable to any person in a civil action for an injury or loss resulting from willful or wanton
 4019 misconduct.

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[62A-15-1802.] 26B-5-606. Division duties -- ACT team license creation.

- (1) To promote the availability of assertive community treatment, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that create a certificate for ACT team personnel and ACT teams, that includes:
 - (a) the standards the division establishes under Subsection (2); and
- 4028 (b) guidelines for:
 - (i) required training and experience of ACT team personnel; and
- 4030 (ii) the coordination of assertive community treatment and other community

4031	resources.
4032	(2) (a) The division shall:
4033	(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4034	make rules that establish standards that an applicant is required to meet to qualify for the
4035	certifications described in Subsection (1); and
4036	(ii) create a statewide ACT team plan that:
4037	(A) identifies statewide assertive community treatment needs, objectives, and
4038	priorities; and
4039	(B) identifies the equipment, facilities, personnel training, and other resources
4040	necessary to provide assertive community treatment.
4041	(b) The division may delegate the ACT team plan requirement described in
4042	Subsection (2)(a)(ii) to a contractor with whom the division contracts to provide assertive
4043	community outreach treatment.
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4045	[62A-15-1803.] <u>26B-5-607.</u> Grants for development of an ACT team.
4046	(1) The division shall award grants for the development of one ACT team to provide
4047	assertive community treatment to individuals in the state.
4048	(2) The division shall prioritize the award of a grant described in Subsection (1) to
4049	entities, based on:
4050	(a) the number of individuals the proposed ACT team will serve; and
4051	(b) the percentage of matching funds the entity will provide to develop the proposed
4052	ACT team.
4053	(3) An entity does not need to have resources already in place to be awarded a grant
4054	described in Subsection (1).
4055	(4) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
4056	Administrative Rulemaking Act, for the application and award of the grants described in
4057	Subsection (1).
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4059	[62A-15-1804.] <u>26B-5-608.</u> Housing assistance program for individuals
4060	discharged from the Utah State Hospital and receiving assertive community treatment.
4061	(1) (a) The division shall, within funds appropriated by the Legislature for this
4062	purpose, implement and manage the operation of a housing assistance program in

4063	consultation with the Utah State Hospital, established in Section 62A-15-601, and one or
4064	more housing authorities, associations of governments, or nonprofit entities.

- 4065 (b) The housing assistance program shall provide the housing assistance described 4066 in Subsection (1)(c) to individuals:
 - (i) who are discharged from the Utah State Hospital; and
 - (ii) who the division determines would benefit from assertive community treatment.
- 4069 (c) The housing assistance provided under the housing assistance program may 4070 include:
 - (i) subsidizing rent payments for housing;

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- (ii) subsidizing the provision of temporary or transitional housing; or
- 4073 (iii) providing money for one-time housing barrier assistance, including rental housing application fees, utility hookup fees, or rental housing security deposits.
 - (2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for the operation of the housing assistance program described in Subsection (1).
 - (3) The division shall report to the Health and Human Services Interim Committee each year before November 30 regarding:
 - (a) the entities the division consulted with under Subsection (1)(a);
 - (b) the number of individuals who are benefitting from the housing assistance program described in Subsection (1);
 - (c) the type of housing assistance provided under the housing assistance program described in Subsection (1);
 - (d) the average monthly dollar amount provided to individuals under the housing assistance program described in Subsection (1); and
- 4087 (e) recommendations regarding improvements or changes to the housing assistance program described in Subsection (1).
- 4090 [62A-15-1402:] 26B-5-609. Department and division duties -- MCOT license 4091 creation.
- 4092 (1) As used in this section:
- 4093 (a) "Commission" means the Behavioral Health Crisis Response Commission created 4094 in Section 63C-18-202.

4095	(b) "Emergency medical service personnel" means the same as that term is defined in
4096	Section 26-8a-102.
4097	(c) "Emergency medical services" means the same as that term is defined in Section
4098	<u>26-8a-102.</u>
4099	(d) "MCOT certification" means the certification created in this part for MCOT
4100	personnel and mental health crisis outreach services.
4101	(e) "MCOT personnel" means a licensed mental health therapist or other mental
4102	health professional, as determined by the division, who is a part of a mobile crisis outreach
4103	team.
4104	(f) "Mental health crisis" means a mental health condition that manifests itself by
4105	symptoms of sufficient severity that a prudent layperson who possesses an average
4106	knowledge of mental health issues could reasonably expect the absence of immediate
4107	attention or intervention to result in:
4108	(i) serious jeopardy to the individual's health or well-being; or
4109	(ii) a danger to others.
4110	(g) (i) "Mental health crisis services" means mental health services and on-site
4111	intervention that a person renders to an individual suffering from a mental health crisis.
4112	(ii) "Mental health crisis services" includes the provision of safety and care plans,
4113	stabilization services offered for a minimum of 60 days, and referrals to other community
4114	resources.
4115	(h) "Mental health therapist" means the same as that term is defined in Section
4116	<u>58-60-102.</u>
4117	(i) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and
4118	mental health professionals that provides mental health crisis services and, based on the
4119	individual circumstances of each case, coordinates with local law enforcement, emergency
4120	medical service personnel, and other appropriate state or local resources.
4121	[(1)] (2) To promote the availability of comprehensive mental health crisis services
4122	throughout the state, the division shall make rules, in accordance with Title 63G, Chapter 3,
4123	Utah Administrative Rulemaking Act, that create a certificate for MCOT personnel and
4124	MCOTs, including:
4125	(a) the standards the division establishes under Subsection [(2)] (3); and
4126	(b) guidelines for:

4127	(i) credit for training and experience; and
4128	(ii) the coordination of:
4129	(A) emergency medical services and mental health crisis services;
4130	(B) law enforcement, emergency medical service personnel, and mobile crisis
4131	outreach teams; and
4132	(C) temporary commitment in accordance with Section 62A-15-629.
4133	[(2)] (3) (a) With recommendations from the commission, the division shall:
4134	(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4135	make rules that establish standards that an applicant is required to meet to qualify for the
4136	MCOT certification described in Subsection (1); and
4137	(ii) create a statewide MCOT plan that:
4138	(A) identifies statewide mental health crisis services needs, objectives, and priorities;
4139	and
4140	(B) identifies the equipment, facilities, personnel training, and other resources
4141	necessary to provide mental health crisis services.
4142	(b) The division may delegate the MCOT plan requirement described in Subsection
4143	(2)(a)(ii) to a contractor with which the division contracts to provide mental health crisis
4144	services.
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4146	[62A-15-1302.] 26B-5-610. Contracts for statewide mental health crisis line and
4147	statewide warm line Crisis worker and certified peer support specialist qualification
4148	or certification Operational standards.
4149	(1) As used in this section:
4150	(a) "Certified peer support specialist" means an individual who:
4151	(i) meets the standards of qualification or certification that the division sets, in
4152	accordance with Subsection (3); and
4153	(ii) staffs the statewide warm line under the supervision of at least one mental health
4154	therapist.
4155	(b) "Commission" means the Behavioral Health Crisis Response Commission created
4156	<u>in Section 63C-18-202.</u>
4157	(c) "Crisis worker" means an individual who:
4158	(i) meets the standards of qualification or certification that the division sets, in

4159	accordance with Subsection (3); and
4160	(ii) staffs the statewide mental health crisis line, the statewide warm line, or a local
4161	mental health crisis line under the supervision of at least one mental health therapist.
4162	(d) "Local mental health crisis line" means a phone number or other response system
4163	that is:
4164	(i) accessible within a particular geographic area of the state; and
4165	(ii) intended to allow an individual to contact and interact with a qualified mental or
4166	behavioral health professional.
4167	(e) "Mental health crisis" means the same as that term is defined in Section
4168	62A-15-1401.
4169	(f) "Mental health therapist" means the same as that term is defined in Section
4170	<u>58-60-102.</u>
4171	(g) "Statewide mental health crisis line" means a statewide phone number or other
4172	response system that allows an individual to contact and interact with a qualified mental or
4173	behavioral health professional 24 hours per day, 365 days per year.
4174	(h) "Statewide warm line" means a statewide phone number or other response
4175	system that allows an individual to contact and interact with a qualified mental or behavioral
4176	health professional or a certified peer support specialist.
4177	[(1)] (2) (a) The division shall enter into a new contract or modify an existing contract
4178	to manage and operate, in accordance with this part, the statewide mental health crisis line
4179	and the statewide warm line.
4180	(b) Through the contracts described in Subsection [(1)(a)] (2)(a) and in consultation
4181	with the commission, the division shall set standards of care and practice for:
4182	(i) the mental health therapists and crisis workers who staff the statewide mental
4183	health crisis line; and
4184	(ii) the mental health therapists, crisis workers, and certified peer support specialists
4185	who staff the statewide warm line.
4186	[(2)] <u>(3)</u> (a) The division shall establish training and minimum standards for the
4187	qualification or certification of:
4188	(i) crisis workers who staff the statewide mental health crisis line, the statewide warm
4189	line, and local mental health crisis lines; and
4190	(ii) certified peer support specialists who staff the statewide warm line.

4191 (b) The division may make rules, in accordance with Title 63G, Chapter 3, Utah 4192 Administrative Rulemaking Act, necessary to establish the training and minimum standards 4193 described in Subsection (2)(a). 4194 [(1)] (4) In consultation with the commission, the division shall ensure that: 4195 (a) the following individuals are available to staff and answer calls to the statewide mental health crisis line 24 hours per day, 365 days per calendar year: 4196 4197 (i) mental health therapists; or 4198 (ii) crisis workers: 4199 (b) a sufficient amount of staff is available to ensure that when an individual calls the 4200 statewide mental health crisis line, regardless of the time, date, or number of individuals trying to simultaneously access the statewide mental health crisis line, an individual 4201 4202 described in Subsection [(1)(a)] (4)(a) answers the call without the caller first: 4203 (i) waiting on hold; or 4204 (ii) being screened by an individual other than a mental health therapist or crisis 4205 worker: 4206 (c) the statewide mental health crisis line has capacity to accept all calls that local 4207 mental health crisis lines route to the statewide mental health crisis line; 4208 (d) the following individuals are available to staff and answer calls to the statewide warm line during the hours and days of operation set by the division under Subsection $\frac{(2)}{(2)}$ 4209 4210 (5) 4211 (i) mental health therapists; 4212 (ii) crisis workers; or 4213 (iii) certified peer support specialists; 4214 (e) when an individual calls the statewide mental health crisis line, the individual's call 4215 may be transferred to the statewide warm line if the individual is not experiencing a mental 4216 health crisis; and 4217 (f) when an individual calls the statewide warm line, the individual's call may be transferred to the statewide mental health crisis line if the individual is experiencing a mental 4218 4219 health crisis.

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warm line.

Administrative Rulemaking Act, to establish the hours and days of operation for the statewide

[(2)] (6) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

4223	[62A-15-1101.] 26B-5-611. Suicide prevention Reporting requirements.
4224	(1) As used in this section:
4225	(a) "Advisory Council" means the Utah Substance Use and Mental Health Advisory
4226	Council created in Section 63M-7-301.
4227	(b) "Bureau" means the Bureau of Criminal Identification created in Section
4228	53-10-201 within the Department of Public Safety.
4229	(c) "Coalition" means the Statewide Suicide Prevention Coalition created under
4230	Subsection (3).
4231	(d) "Coordinator" means the state suicide prevention coordinator appointed under
4232	Subsection (2).
4233	(e) "Fund" means the Governor's Suicide Prevention Fund created in Section
4234	<u>26A-1-3XX.</u>
4235	(f) "Intervention" means an effort to prevent a person from attempting suicide.
4236	(g) "Legal intervention" means an incident in which an individual is shot by another
4237	individual who has legal authority to use deadly force.
4238	(h) "Postvention" means intervention after a suicide attempt or a suicide death to
4239	reduce risk and promote healing.
4240	(i) "Shooter" means an individual who uses a gun in an act that results in the death of
4241	the actor or another individual, whether the act was a suicide, homicide, legal intervention,
4242	act of self-defense, or accident.
4243	[(1)] <u>(2)</u> The division shall appoint a state suicide prevention coordinator to
4244	administer a state suicide prevention program composed of suicide prevention, intervention,
4245	and postvention programs, services, and efforts.
4246	[(2)] <u>(3)</u> The coordinator shall:
4247	(a) establish a Statewide Suicide Prevention Coalition with membership from public
4248	and private organizations and Utah citizens; and
4249	(b) appoint a chair and co-chair from among the membership of the coalition to lead
4250	the coalition.
4251	[(3)] <u>(4)</u> The state suicide prevention program may include the following
4252	components:
4253	(a) delivery of resources, tools, and training to community-based coalitions;
4254	(b) evidence-based suicide risk assessment tools and training;

(c) town hall meetings for building community-based suicide prevention strategies; 4255 4256 (d) suicide prevention gatekeeper training; 4257 (e) training to identify warning signs and to manage an at-risk individual's crisis; 4258 (f) evidence-based intervention training: 4259 (g) intervention skills training; 4260 (h) postvention training; or 4261 (i) a public education campaign to improve public awareness about warning signs of 4262 suicide and suicide prevention resources. 4263 (4) (5) The coordinator shall coordinate with the following to gather statistics, 4264 among other duties: 4265 (a) local mental health and substance abuse authorities; 4266 (b) the State Board of Education, including the public education suicide prevention coordinator described in Section 53G-9-702; 4267 4268 (c) the Department of Health; 4269 (d) health care providers, including emergency rooms; 4270 (e) federal agencies, including the Federal Bureau of Investigation; 4271 (f) other unbiased sources; and 4272 (g) other public health suicide prevention efforts. 4273 (5) The coordinator shall provide a written report to the Health and Human 4274 Services Interim Committee, at or before the October meeting every year, on: 4275 (a) implementation of the state suicide prevention program, as described in 4276 Subsections [(1) and (3)] (2) and (4); 4277 (b) data measuring the effectiveness of each component of the state suicide 4278 prevention program; 4279 (c) funds appropriated for each component of the state suicide prevention program; 4280 and 4281 (d) five-year trends of suicides in Utah, including subgroups of youths and adults and other subgroups identified by the state suicide prevention coordinator. 4282 4283 [(6)] (7) The coordinator shall, in consultation with the bureau, implement and 4284 manage the operation of the firearm safety program described in Subsection 62A-15-103(3).

Act, the division shall make rules:

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[(7)] (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

- 4287 (a) governing the implementation of the state suicide prevention program, consistent 4288 with this section; and
- 4289 (b) in conjunction with the bureau, defining the criteria for employers to apply for 4290 grants under the Suicide Prevention Education Program described in Section 62A-15-103.1, 4291 which shall include:
- (i) attendance at the suicide prevention education course described in Subsection 4292 4293 62A-15-103(3); and
- 4294 (ii) distribution of the firearm safety brochures or packets created in Subsection 4295 62A-15-103(3), but does not require the distribution of a cable-style gun lock with a firearm if 4296 the firearm already has a trigger lock or comparable safety mechanism.
 - (8) As funding by the Legislature allows, the coordinator shall award grants, not to exceed a total of \$100,000 per fiscal year, to suicide prevention programs that focus on the needs of children who have been served by the Division of Juvenile Justice Services.
 - (10) The coordinator and the coalition shall submit to the advisory council, no later than October 1 each year, a written report detailing the previous fiscal year's activities to fund, implement, and evaluate suicide prevention activities described in this section.

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- [26-1-43] 26B-5-612. Integrated behavioral health care grant program.
- 4305 (1) As used in this section:
- (a) "Integrated behavioral health care services" means coordinated physical and 4306 4307 behavioral health care services for one patient.
- 4308 (b) "Local mental health authority" means a local mental health authority described in Section 17-43-301. 4309
 - (c) "Project" means a project described in Subsection (2).
- (2) Before July 1 of each year, the department shall issue a request for proposals in 4311 4312 accordance with this section to award a grant to a local mental health authority for 4313 development or expansion of a project to provide effective delivery of integrated behavioral 4314 health care services.
- (3) To be considered for a grant award under Subsection (2), a local mental health 4315 4316 authority shall submit an application to the department that:
- 4317 (a) explains the benefits of integrated behavioral health care services to a patient who is receiving mental health or substance use disorder treatment; 4318

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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4319	(b) describes the local mental health authority's operational plan for delivery of
4320	integrated behavioral health care services under the proposed project and any data or
4321	evidence-based practices supporting the likely success of the operational plan;
4322	(c) includes:
4323	(i) the number of patients to be served by the local mental health authority's proposed
4324	project; and
4325	(ii) the cost of the local mental health authority's proposed project; and
4326	(d) provides details regarding:
4327	(i) any plan to use funding sources in addition to the grant award under this section
4328	for the local mental health authority's proposed project;
4329	(ii) any existing or planned contracts or partnerships between the local mental health
4330	authority and other individuals or entities to develop or implement the local mental health
4331	authority's proposed project; and
4332	(iii) the sustainability and reliability of the local mental health authority's proposed
4333	project.
4334	(4) In evaluating a local mental health authority's application under Subsection (3) to
4335	determine the grant award under Subsection (2), the department shall consider:
4336	(a) how the local mental health authority's proposed project will ensure effective
4337	provision of integrated behavioral health care services;
4338	(b) the cost of the local mental health authority's proposed project;
4339	(c) the extent to which any existing or planned contracts or partnerships or additional
4340	funding sources described in the local mental health authority's application are likely to
4341	benefit the proposed project; and
4342	(d) the sustainability and reliability of the local mental health authority's proposed
4343	project.
4344	(5) Before July 1, 2025, the department shall report to the Health and Human
4345	Services Interim Committee regarding:
4346	(a) any knowledge gained or obstacles encountered in providing integrated behavioral
4347	health care services under each project;
4348	(b) data gathered in relation to each project; and

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(c) recommendations for expanding a project statewide.'

4351	Chapter 6. Long Term Services and Supports, Aging, and Disabilities.
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4353	Part 1. Aging and Adult Services.
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4355	26B-6-101. [Long-term services and supports Reserved] Chapter definitions.
4356	As used in this chapter:
4357	(1) "Adult" or "high risk adult" means a person 18 years of age or older who
4358	experiences a condition:
4359	(a) that places the person at a high risk of being unable to care for himself:
4360	(i) as determined by assessment; and
4361	(ii) due to the onset of a physical or cognitive impairment or frailty; and
4362	(b) for which the person is not eligible to receive services under:
4363	(i) Chapter 5, Services for People with Disabilities; or
4364	(ii) Chapter 15, Substance Abuse and Mental Health Act.
4365	(2) "Aging" and "aged" means a person 60 years of age or older.
4366	(3) "Area agency" means an area agency that provides services to the aged, high risk
4367	adults, or both within a planning and service area.
4368	(4) "Area agency on aging" means a public or private nonprofit agency or office
4369	designated by the division to:
4370	(a) operate within a planning and service area of the state; and
4371	(b) develop and implement a broad range of services for the aged in the area
4372	described in Subsection (4)(a).
4373	(5) "Area agency on high risk adults" means a public or private nonprofit agency or
4374	office designated by the division to:
4375	(a) operate within a planning and service area of the state; and
4376	(b) develop and implement services for high risk adults in the area described in
4377	Subsection (5)(a).
4378	(6) "Board" means the Board of Aging and Adult Services.
4379	(7) "Director" means the director of the division.
4380	(8) "Division" means the Division of Aging and Adult Services within the department.
4381	(9) "Personal care attendant" means a person who:
4382	(a) is selected by:

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              (i) an aged person;
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              (ii) an agent of an aged person;
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              (iii) a high risk adult; or
              (iv) an agent of a high risk adult; and
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              (b) provides personal services to the:
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              (i) aged person described in Subsection (9)(a)(i); or
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              (ii) high risk adult described in Subsection (9)(a)(iii).
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              (10) "Personal services" means nonmedical care and support, including assisting a
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       person with:
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              (a) meal preparation;
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              (b) eating;
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              (c) bathing;
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              (d) dressing;
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              (e) personal hygiene; or
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              (f) daily living activities.
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              (11) "Planning and service area" means a geographical area of the state designated
       by the division for purposes of planning, development, delivery, and overall administration of
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       services for the aged or high risk adults.
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              (12) (a) "Public funds" means state or federal funds that are disbursed by:
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              (i) the Department of Health;
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              (ii) the division;
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              (iii) an area agency; or
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              (iv) an area agency on aging.
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              (b) "Public funds" includes:
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              (i) Medicaid funds; and
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              (ii) Medicaid waiver funds.
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              [<del>62A-3-102.</del>] 26B-6-102. Division created.
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              There is created a Division of Aging and Adult Services within the department, under
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       the administration and general supervision of the executive director.
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              [62A-3-103.] 26B-6-103. Director of division -- Appointment -- Qualifications.
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4415 (1) The director of the division shall be appointed by the executive director with the 4416 concurrence of the board. 4417 (2) The director shall have a bachelor's degree from an accredited university or 4418 college, be experienced in administration, and be knowledgeable in matters concerning the 4419 aging and adult populations. 4420 (3) The director is the administrative head of the division. 4421 4422 [62A-3-104.] 26B-6-104. Authority of division. 4423 (1) The division is the sole state agency, as defined by the Older Americans Act of 4424 1965, 42 U.S.C. 3001 et seq., to: 4425 (a) serve as an effective and visible advocate for the aging and adult population of 4426 this state: 4427 (b) develop and administer a state plan under the policy direction of the board; and 4428 (c) take primary responsibility for state activities relating to provisions of the Older 4429 Americans Act of 1965, as amended. 4430 (2) (a) The division has authority to designate: 4431 (i) planning and service areas for the state; and 4432 (ii) an area agency on aging within each planning and service area to design and 4433 implement a comprehensive and coordinated system of services and programs for the aged 4434 within appropriations from the Legislature. 4435 (b) Designation as an area agency on aging may be withdrawn: 4436 (i) upon request of the area agency on aging; or 4437 (ii) upon noncompliance with the provisions of the: 4438 (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.; (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 4439 3001 et seq.; 4440 4441 (C) provisions of this chapter; or (D) rules, policies, or procedures established by the division. 4442 4443 (3) (a) The division has the authority to designate: 4444 (i) planning and service areas for the state; and 4445 (ii) subject to Subsection (3)(b), an area agency on high risk adults within each

planning and service area to design and implement a comprehensive and coordinated

system of case management and programs for high risk adults within appropriations from the Legislature.

- (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:
- 4451 (i) the area agency on aging that operates within the same geographic area if that 4452 agency requests, before July 1, 1998, to expand that agency's current contract with the 4453 division to include the responsibility of:
 - (A) being the area agency on high risk adults; or
 - (B) operating the area agency on high risk adults:
 - (I) through joint cooperation with one or more existing area agencies on aging; and
- 4457 (II) without reducing geographical coverage in any service area; or
- 4458 (ii) a public or private nonprofit agency or office if the area agency on aging that 4459 operates within the same geographic area has not made a request in accordance with 4460 Subsection (3)(b)(i).
 - (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
- 4462 (ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.
 - (d) Designation as an area agency on high risk adults may be withdrawn:
 - (i) upon request by the area agency; or
 - (ii) upon noncompliance with:
- 4467 (A) state law;

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- (B) federal law; or
 - (C) rules, policies, or procedures established by the division.
- 4470 (4) (a) The division may, by following the procedures and requirements of Title 63J,
 4471 Chapter 5, Federal Funds Procedures Act:
 - (i) seek federal grants, loans, or participation in federal programs; and
- 4473 (ii) receive and distribute state and federal funds for the division's programs and 4474 services to the aging and adult populations of the state.
 - (b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.
 - (5) The division has authority to establish, either directly or by contract, programs of

- advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.
- 4481 (6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah
 4482 Procurement Code, the division may contract with:
- 4483 (a) the governing body of an area agency to provide a comprehensive program of 4484 services; or
 - (b) public and private entities for special services.
- 4486 (7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.
- 4488 (8) The division has authority to prepare and submit reports regarding the operation 4489 and administration of the division to the department, the Legislature, and the governor, as 4490 requested.
- 4491 (9) The division shall:

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- 4492 (a) implement and enforce policies established by the board governing all aspects of 4493 the division's programs for aging and adult persons in the state;
 - (b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:
- 4496 (i) the division;
- 4497 (ii) area agencies; and
- 4498 (iii) an entity that receives funds from an area agency;
- (c) examine expenditures of public funds;
 - (d) withhold funds from programs based on contract noncompliance;
- (e) review and approve plans of area agencies in order to ensure:
- 4502 (i) compliance with division policies; and
- 4503 (ii) a statewide comprehensive program;
- 4504 (f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:
- 4506 (i) state and federal agencies;
- 4507 (ii) social and health agencies:
- 4508 (iii) education and research organizations; and
- 4509 (iv) other related groups;
- 4510 (g) advocate for the aging and adult populations;

4511	(h) promote and conduct research on the problems and needs of aging and adult
4512	persons;
4513	(i) submit recommendations for changes in policies, programs, and funding to the:
4514	(i) governor; and
4515	(ii) Legislature; and
4516	(j) (i) accept contributions to and administer the funds contained in the "Out and
4517	About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and
4518	(ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
4519	Rulemaking Act, to facilitate the administration of the "Out and About" Homebound
4520	Transportation Assistance Fund in accordance with Section 62A-3-110.
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4522	[62A-3-104.1.] 26B-6-105. Powers and duties of area agencies Registration
4523	as a limited purpose entity.
4524	(1) An area agency that provides services to an aged person, or a high risk adult shall
4525	within the area agency's respective jurisdiction:
4526	(a) advocate by monitoring, evaluating, and providing input on all policies, programs,
4527	hearings, and levies that affect a person described in this Subsection (1);
4528	(b) design and implement a comprehensive and coordinated system of services within
4529	a designated planning and service area;
4530	(c) conduct periodic reviews and evaluations of needs and services;
4531	(d) prepare and submit to the division plans for funding and service delivery for
4532	services within the designated planning and service area;
4533	(e) establish, either directly or by contract, programs licensed under Chapter 2,
4534	Licensure of Programs and Facilities;
4535	(f) (i) appoint an area director;
4536	(ii) prescribe the area director's duties; and
4537	(iii) provide adequate and qualified staff to carry out the area plan described in
4538	Subsection (1)(d);
4539	(g) establish rules not contrary to policies of the board and rules of the division,
4540	regulating local services and facilities;
4541	(h) operate other services and programs funded by sources other than those
4542	administered by the division;

(i) establish mechanisms to provide direct citizen input, including an area agency 4543 4544 advisory council with a majority of members who are eligible for services from the area 4545 agency; 4546 (i) establish fee schedules; and 4547 (k) comply with the requirements and procedures of: 4548 (i) Title 11, Chapter 13, Interlocal Cooperation Act; and 4549 (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act. 4550 4551 (2) Before disbursing any public funds, an area agency shall require that all entities 4552 receiving any public funds agree in writing that: (a) the division may examine the entity's program and financial records; and 4553 4554 (b) the auditor of the local area agency may examine and audit the entity's program 4555 and financial records, if requested by the local area agency. 4556 (3) An area agency on aging may not disburse public funds to a personal care 4557 attendant as payment for personal services rendered to an aged person or high risk adult, 4558 except as provided in Section 62A-3-104.3. 4559 (4) (a) For the purpose of providing services pursuant to this part, a local area agency 4560 may receive: 4561 (i) property; 4562 (ii) grants; 4563 (iii) gifts; 4564 (iv) supplies; 4565 (v) materials; (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v): 4566 4567 and 4568 (vii) contributions. 4569 (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program. 4570 4571 (5) (a) Area agencies shall award all public funds in compliance with: 4572 (i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or 4573 (ii) a county procurement ordinance that requires procurement procedures similar to 4574 those described in Subsection (5)(a)(i).

4575 (b) (i) If all initial bids on a project are rejected, the area agency shall publish a new 4576 invitation to bid. (ii) If no satisfactory bid is received by the area agency described in Subsection 4577 4578 (5)(b)(i), when the bids received from the second invitation are opened the area agency may 4579 execute a contract without requiring competitive bidding. 4580 (c) (i) An area agency need not comply with the procurement provisions of this 4581 section when it disburses public funds to another governmental entity. 4582 (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political 4583 subdivision or institution of higher education of the state. 4584 (d) (i) Contracts awarded by an area agency shall be for a: 4585 (A) fixed amount; and 4586 (B) limited period. (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in 4587 4588 available funding for the same contract purpose without competition. 4589 (6) Local area agencies shall comply with: 4590 (a) applicable state and federal: 4591 (i) statutes; 4592 (ii) policies; and 4593 (iii) audit requirements; and 4594 (b) directives resulting from an audit described in Subsection (6)(a)(iii). 4595 (7) (a) Each area agency shall register and maintain the area agency's registration as 4596 a limited purpose entity, in accordance with Section 67-1a-15. 4597 (b) An area agency that fails to comply with Subsection (7)(a) or Section 67-1a-15 is subject to enforcement by the state auditor, in accordance with Section 67-3-1. 4598 4599 [62A-3-104.2.] 26B-6-106. Contracts for services. 4600 4601 When an area agency has established a plan to provide services authorized by this chapter, and those services meet standards fixed by rules of the board, the area agency may 4602 4603 enter into a contract with the division for services to be furnished by that area agency for an

4606 [62A-3-104.3.] 26B-6-107. Disbursal of public funds -- Background check of a

agreed compensation to be paid by the division.

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4607	personal care attendant.
4608	(1) [For purposes of] As used in this section, "office" means the [same as that term
4609	is defined in Section 62A-2-101] Office of Licensing and Background Checks within the
4610	department.
4611	(2) Public funds may not be disbursed to a personal care attendant as payment for
4612	personal services rendered to an aged person or high risk adult unless the office approves
4613	the personal care attendant to have direct access and provide services to children or
4614	vulnerable adults pursuant to Section 62A-2-120.
4615	(3) For purposes of Subsection (2), the office shall conduct a background check of a
4616	personal care attendant:
4617	(a) who desires to receive public funds as payment for the personal services
4618	described in Subsection (2); and
4619	(b) using the same procedures established for a background check of an applicant for
4620	a license under Section 62A-2-120.
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4622	[62A-3-105.] 26B-6-108. Matching requirements for state and federal Older
4623	American funds.
4624	(1) Except as provided in Subsection (2), a local area agency on aging that receives
4625	state or federal Older Americans Act Supportive Services, Older Americans Act Congregate
4626	Meals, or Older Americans Act Home Delivered Meals related funds from the division to
4627	provide programs and services under this chapter shall match those funds in an amount at
4628	least equal to:
4629	(a) 15% of service dollars; and
4630	(b) 25% of administrative dollars.
4631	(2) A local area agency on aging is not required to match cash-in-lieu funds related to
4632	the Home Delivered Meals program or congregate meals.
4633	(3) A local area agency on aging may include services, property, or other in-kind
4634	contributions to meet the administrative dollars match but may only use cash to meet the
4635	service dollars match.
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Eligibility for services provided by the division directly or through contractual

[62A-3-106.] <u>26B-6-109.</u> Eligibility criteria.

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arrangements shall be determined by criteria established by the division and approved by the board.

- [62A-3-106.5.] <u>26B-6-110.</u> Agency responsible to investigate and provide services.
- 4644 (1) [For purposes of] As used in this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).
 - (2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish procedures to:
 - (a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and
 - (b) determine whether, and under what circumstances, the agency described in Subsection (2)(a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.
 - (3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section 62A-3-305.

- [62A-3-107.] 26B-6-111. Requirements for establishing division policy.
- (1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections 62A-3-104.1 and 62A-3-104.2. In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.
- (2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also provide a mechanism for review of its existing policy and for consideration

- of policy changes that are proposed by those local area agencies.
- 4672 (3) A member may not receive compensation or benefits for the member's service,
- but, at the executive director's discretion, may receive per diem and travel expenses in
- 4674 accordance with:
- 4675 (a) Section 63A-3-106;
- 4676 (b) Section 63A-3-107; and
- 4677 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 4678 **63A-3-107**.

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- [62A-3-107.5.] 26B-6-112. Allocation of funds to acquire facilities.
- 4681 (1) (a) The board may make grants to local area agencies on aging to acquire 4682 facilities to provide community-based services for aged persons. Grants under this section 4683 shall be made solely from appropriations made to the division for implementation of this
 - (b) Acquisition of a facility may include acquisition of real property, construction of a new facility, acquisition of an existing facility, or alteration, renovation, or improvement of an existing facility.
 - (c) The local area agency may allocate grants received under this section to a local nonprofit or governmental agency that owns or operates a facility to provide community-based services for aged persons.
 - (2) A local area agency on aging or the local nonprofit or governmental agency that owns or operates the facility and receives grant money from the area agency shall provide a matching contribution of at least 25% of the grant funds it receives under this section. A matching contribution may include funds, services, property, or other in-kind contributions.
 - (3) In making grants under this section, the board may consider:
- 4696 (a) the extent and availability of public and private funding to operate programs in the facility to be acquired and to provide for maintenance of that facility;
 - (b) the need for community-based services in the geographical area served by the area agency on aging;
- 4700 (c) the availability of private and local funds to assist in acquisition, alteration, 4701 renovation, or improvement of the facility; and
- (d) the extent and level of support for acquisition of the facility from local government

4703 officials, private citizens, interest groups, and others.

- 4704 (4) Grants to local area agencies on aging and any local nonprofit or governmental 4705 agency that owns or operates a facility and receives grant money from the area agency 4706 under this section are subject to the oversight and control by the division described in 4707 Subsection 62A-3-104(8).
 - (5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

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[62A-3-108.] <u>26B-6-113.</u> Allocation of funds to local area agencies -- Formulas.

- 4714 (1) (a) The board shall establish by rule formulas for allocating funds to local area agencies through contracts to provide programs and services in accordance with this part based on need.
 - (b) Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need.
 - (c) Formulas established by the board shall include a differential to compensate for additional costs of providing services in rural areas.
 - (2) Formulas established under Subsection (1) shall be in effect on or before July 1, 1998, and apply to all state and federal funds appropriated by the Legislature to the division for local area agencies, but does not apply to:
 - (a) funds that local area agencies receive from sources other than the division;
 - (b) funds that local area agencies receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;
 - (c) funds that a local area agency receives from the division to meet a need that exists only within that local area; and
- (d) funds that a local area agency receives from the division for research projects.

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4733 [62A-3-109.] **26B-6-114.** Adjudicative proceedings.

Adjudicative proceedings held by, or relating to, the division or the board shall comply

4735	with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures
4736	Act.
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4738	Part 2. Abuse, Neglect, or Exploitation of a Vulnerable Adult.
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4740	[62A-3-301.] <u>26B-6-201.</u> Definitions.
4741	As used in this part:
4742	(1) "Abandonment" means any knowing or intentional action or failure to act, including
4743	desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable
4744	adult without the means or ability to obtain necessary food, clothing, shelter, or medical or
4745	other health care.
4746	(2) "Abuse" means:
4747	(a) knowingly or intentionally:
4748	(i) attempting to cause harm;
4749	(ii) causing harm; or
4750	(iii) placing another in fear of harm;
4751	(b) unreasonable or inappropriate use of physical restraint, medication, or isolation
4752	that causes or is likely to cause harm to a vulnerable adult;
4753	(c) emotional or psychological abuse;
4754	(d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the
4755	Individual; or
4756	(e) deprivation of life sustaining treatment, or medical or mental health treatment,
4757	except:
4758	(i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
4759	(ii) when informed consent, as defined in Section 76-5-111, has been obtained.
4760	(3) "Adult" means an individual who is 18 years old or older.
4761	(4) "Adult protection case file" means a record, stored in any format, contained in a
4762	case file maintained by Adult Protective Services.
4763	(5) "Adult Protective Services" means the unit within the division responsible to
4764	investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
4765	protective services.
4766	(6) "Capacity to consent" means the ability of an individual to understand and

communicate regarding the nature and consequences of decisions relating to the individual, and relating to the individual's property and lifestyle, including a decision to accept or refuse services.

- (7) "Caretaker" means a person or public institution that is entrusted with or assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities for pecuniary gain, by contract, or as a result of friendship, or who is otherwise in a position of trust and confidence with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a court-appointed or voluntary guardian, or a person who contracts or is under court order to provide care.
 - (8) "Counsel" means an attorney licensed to practice law in this state.
- (9) "Database" means the statewide database maintained by the division under Section 62A-3-311.1.
- (10) (a) "Dependent adult" means an individual 18 years old or older, who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights.
- (b) "Dependent adult" includes an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.
 - (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
 - (12) "Elder adult" means an individual 65 years old or older.
- 4789 (13) "Emergency" means a circumstance in which a vulnerable adult is at an 4790 immediate risk of death, serious physical injury, or serious physical, emotional, or financial 4791 harm.
 - (14) "Emergency protective services" means measures taken by Adult Protective Services under time-limited, court-ordered authority for the purpose of remediating an emergency.
 - (15) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
 - (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,

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- 4800 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct 4801 by a vulnerable adult who lacks the capacity to intentionally or knowingly:
 - (i) engage in the conduct; or
- 4803 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, 4804 or confusion.
- 4805 (16) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 4806 76-5b-202.
- 4807 (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or 4808 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted 4809 knowingly or intentionally.
- 4810 (18) "Inconclusive" means a finding by the division that there is not a reasonable 4811 basis to conclude that abuse, neglect, or exploitation occurred.
- 4812 (19) "Intimidation" means communication through verbal or nonverbal conduct which 4813 threatens deprivation of money, food, clothing, medicine, shelter, social interaction, 4814 supervision, health care, or companionship, or which threatens isolation or abuse.
 - (20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person, unless the restriction of personal rights is authorized by court order, by:
 - (i) preventing the vulnerable adult from communicating, visiting, interacting, or initiating interaction with others, including receiving or inviting visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, or communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
- 4825 (iii) making false or misleading statements to the vulnerable adult in order to induce 4826 the vulnerable adult to refuse to receive communication from visitors or other family 4827 members.
 - (b) "Isolation" does not include an act:
- 4829 (i) intended in good faith to protect the physical or mental welfare of the vulnerable 4830 adult; or

- 4831 (ii) performed pursuant to the treatment plan or instructions of a physician or other 4832 professional advisor of the vulnerable adult.
- 4833 (21) "Lacks capacity to consent" is as defined in Section 76-5-111.4.
- 4834 (22) (a) "Neglect" means:

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- (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, 4835 4836 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable 4837 adult, unless the vulnerable adult is able to provide or obtain the necessary care without 4838 assistance; or
- 4839 (B) failure of a caretaker to provide protection from health and safety hazards or 4840 maltreatment;
 - (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
 - (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
- 4846 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment 4847 plan that causes or is likely to cause harm to the vulnerable adult;
 - (v) self-neglect by the vulnerable adult; or
- 4849 (vi) abandonment by a caretaker.
- 4850 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or 4851 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.
- 4852 (23) "Physical injury" includes the damage and conditions described in Section 4853 76-5-111.
- (24) "Protected person" means a vulnerable adult for whom the court has ordered 4854 4855 protective services.
- 4856 (25) "Protective services" means services to protect a vulnerable adult from abuse, 4857 neglect, or exploitation.
 - (26) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

(27) "Serious physical injury" is as defined in Section 76-5-111. 4863 4864 (28) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred. 4865 4866 (29) "Undue influence" occurs when a person: (a) uses influence to take advantage of a vulnerable adult's mental or physical 4867 4868 impairment; or 4869 (b) uses the person's role, relationship, or power: 4870 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or 4871 fear of a vulnerable adult; or 4872 (ii) to gain control deceptively over the decision making of the vulnerable adult. (30) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental 4873 4874 or physical impairment which substantially affects that person's ability to: 4875 (a) provide personal protection; 4876 (b) provide necessities such as food, shelter, clothing, or mental or other health care; 4877 (c) obtain services necessary for health, safety, or welfare; 4878 (d) carry out the activities of daily living; 4879 (e) manage the adult's own financial resources; or 4880 (f) comprehend the nature and consequences of remaining in a situation of abuse, 4881 neglect, or exploitation. 4882 (31) "Without merit" means a finding that abuse, neglect, or exploitation did not occur. 4883 4884 [62A-3-302.] 26B-6-202. Purpose of Adult Protective Services Program. 4885 Subject to the rules made by the division under Section 62A-3-106.5, Adult Protective 4886 Services: 4887 (1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or 4888 exploitation of vulnerable adults; 4889 (2) shall, where appropriate, provide short-term, limited protective services with the 4890 permission of the affected vulnerable adult or the guardian or conservator of the vulnerable 4891 adult; 4892 (3) shall, subject to Section 62A-3-320, provide emergency protective services; and

Rulemaking Act, and develop procedures and policies relating to:

(4) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

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WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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4895	(a) reporting and investigating incidents of abuse, neglect, or exploitation; and
4896	(b) providing protective services to the extent that funds are appropriated by the
4897	Legislature for this purpose.
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4899	[62A-3-303.] <u>26B-6-203.</u> Powers and duties of Adult Protective Services.
4900	In addition to all other powers and duties that Adult Protective Services is given under
4901	this part, Adult Protective Services:
4902	(1) shall maintain an intake system for receiving and screening reports;
4903	(2) shall investigate referrals that meet the intake criteria;
4904	(3) shall conduct assessments of vulnerability and functional capacity as it relates to
4905	an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
4906	(4) shall perform assessments based on protective needs and risks for a vulnerable
4907	adult who is the subject of a report;
4908	(5) may address any protective needs by making recommendations to and
4909	coordinating with the vulnerable adult or by making referrals to community resources;
4910	(6) may provide short-term, limited services to a vulnerable adult when family or
4911	community resources are not available to provide for the protective needs of the vulnerable
4912	adult;
4913	(7) shall have access to facilities licensed by, or contracted with, the department or
4914	the Department of Health for the purpose of conducting investigations;
4915	(8) shall be given access to, or provided with, written statements, documents,
4916	exhibits, and other items related to an investigation, including private, controlled, or protected
4917	medical or financial records of a vulnerable adult who is the subject of an investigation if:
4918	(a) for a vulnerable adult who has the capacity to consent, the vulnerable adult signs
4919	a release of information; or
4920	(b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena
4921	is issued by Adult Protective Services;
4922	(9) may initiate proceedings in a court of competent jurisdiction to seek relief
4923	necessary to carry out the provisions of this chapter;
4924	(10) shall, subject to Section 62A-3-320, provide emergency protective services;

caretaker, to cooperate with Adult Protective Services in carrying out its duties under this

(11) may require all persons, including family members of a vulnerable adult and any

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4927	chapter, including the provision of statements, documents, exhibits, and other items that
4928	assist Adult Protective Services in conducting investigations and providing protective
4929	services;
4930	(12) may require all officials, agencies, departments, and political subdivisions of the
4931	state to assist and cooperate within their jurisdictional power with the court, the division, and
4932	Adult Protective Services in furthering the purposes of this chapter;
4933	(13) may conduct studies and compile data regarding abuse, neglect, and
4934	exploitation; and
4935	(14) may issue reports and recommendations.
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4937	[62A-3-304.] <u>26B-6-204.</u> Cooperation by caretaker.
4938	A caretaker, facility, or other institution shall, regardless of the confidentiality
4939	standards of the caretaker, facility, or institution:
4940	(1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this
4941	chapter;
4942	(2) cooperate with any Adult Protective Services investigation;
4943	(3) provide Adult Protective Services with access to records or documents relating to
4944	the vulnerable adult who is the subject of an investigation; or
4945	(4) provide evidence in any judicial or administrative proceeding relating to a
4946	vulnerable adult who is the subject of an investigation.
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4948	[62A-3-305.] 26B-6-205. Reporting requirements Investigation Exceptions
4949	Immunity Penalties Nonmedical healing.
4950	(1) Except as provided in Subsection (4), if an individual has reason to believe that a

- (1) Except as provided in Subsection (4), if an individual has reason to believe that a vulnerable adult is, or has been, the subject of abuse, neglect, or exploitation, the individual shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services or to the nearest peace officer or law enforcement agency.
- (2) (a) If a peace officer or a law enforcement agency receives a report under Subsection (1), the peace officer or the law enforcement agency shall immediately notify Adult Protective Services.
- (b) Adult Protective Services and the peace officer or the law enforcement agency shall coordinate, as appropriate, efforts to investigate the report under Subsection (1) and to

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4959 provide protection to the vulnerable adult.

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- (3) When a report under Subsection (1), or a subsequent investigation by Adult 4960 Protective Services, indicates that a criminal offense may have occurred against a vulnerable 4961 4962 adult:
 - (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
- 4965 (b) the law enforcement agency shall initiate an investigation in cooperation with Adult 4966 Protective Services.
 - (4) Subject to Subsection (5), the reporting requirement described in Subsection (1) does not apply to:
 - (a) a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:
 - (i) the perpetrator made the confession directly to the member of the clergy; and
 - (ii) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession; or
 - (b) an attorney, or an individual employed by the attorney, if knowledge of the suspected abuse, neglect, or exploitation of a vulnerable adult arises from the representation of a client, unless the attorney is permitted to reveal the suspected abuse, neglect, or exploitation of the vulnerable adult to prevent reasonably certain death or substantial bodily harm in accordance with Utah Rules of Professional Conduct, Rule 1.6.
 - (5) (a) When a member of the clergy receives information about abuse, neglect, or exploitation of a vulnerable adult from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse, neglect, or exploitation from the confession of the perpetrator.
 - (b) Exemption of the reporting requirement for an individual described in Subsection (4) does not exempt the individual from any other efforts required by law to prevent further abuse, neglect, or exploitation of a vulnerable adult by the perpetrator.
 - (6) (a) As used in this Subsection (6), "physician" means an individual licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(b) The physician-patient privilege does not:

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- (i) excuse a physician from reporting suspected abuse, neglect, or exploitation of a 4992 4993 vulnerable adult under Subsection (1); or
 - (ii) constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any judicial or administrative proceeding resulting from a report under Subsection (1).
 - (7) (a) An individual who in good faith makes a report under Subsection (1), or who otherwise notifies Adult Protective Services or a peace officer or law enforcement agency, is immune from civil and criminal liability in connection with the report or notification.
 - (b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency, under Subsection (1), is subject to a private right of action and liability for the abuse, neglect, or exploitation of a vulnerable adult that is committed by the individual who was not reported to Adult Protective Services or to the nearest peace officer or law enforcement agency.
 - (c) This Subsection (7) does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.
 - (8) If Adult Protective Services has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, or exploitation of a vulnerable adult in accordance with this section, Adult Protective Services shall file a complaint with:
 - (a) the Division of Professional Licensing if the individual is a health care provider, as defined in Section 80-2-603, or a mental health therapist, as defined in Section 58-60-102;
 - (b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; and
 - (c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102.
 - (9) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency under Subsection (1).
 - (b) If an individual is convicted under Subsection (9)(a), the court may order the individual, in addition to any other sentence the court imposes, to:

- (i) complete community service hours; or
- 5024 (ii) complete a program on preventing abuse, neglect, and exploitation of vulnerable adults.
 - (c) In determining whether it would be appropriate to charge an individual with a violation of Subsection (9)(a), the prosecuting attorney shall take into account whether a reasonable individual would not have reported suspected abuse, neglect, or exploitation of a vulnerable adult because reporting would have placed the individual in immediate danger of death or serious bodily injury.
 - (d) Notwithstanding any contrary provision of law, a prosecuting attorney may not use an individual's violation of Subsection (9)(a) as the basis for charging the individual with another offense.
 - (e) A prosecution for failure to report under Subsection (9)(a) shall be commenced within two years after the day on which the individual had knowledge of the suspected abuse, neglect, or exploitation and willfully failed to report.
 - (10) Under circumstances not amounting to a violation of Section 76-8-508, an individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report under Subsection (1), the individual who made the report under Subsection (1), a witness, or any other person cooperating with an investigation conducted in accordance with this chapter.
 - (11) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

[62A-3-307.] 26B-6-206. Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect, or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

- (1) consents to the taking of the photographs, video tape recordings, or audio or video tape accounts; or
 - (2) lacks the capacity to give the consent described in Subsection (1).

5055	[62A-3-308.] <u>26B-6-207.</u> Peace officer's authority to transport Notification.
5056	(1) A peace officer may remove and transport, or cause to have transported, a
5057	vulnerable adult to an appropriate medical or shelter facility, if:
5058	(a) the officer has probable cause to believe that:
5059	(i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and
5060	(ii) the vulnerable adult will suffer serious physical injury or death if not immediately
5061	placed in a safe environment;
5062	(b) the vulnerable adult refuses to consent or lacks capacity to consent; and
5063	(c) there is not time to notify interested parties or to apply for a warrant or other court
5064	order.
5065	(2) A peace officer described in Subsection (1) shall, within four hours after a
5066	vulnerable adult is transported to an appropriate medical or shelter facility:
5067	(a) notify Adult Protective Services intake; and
5068	(b) request that Adult Protective Services or the division file a petition with the court
5069	for an emergency protective order.
5070	
5071	[62A-3-309.] 26B-6-208. Enforcement by division Duty of county or district
5072	attorney.
5073	(1) It is the duty of the county or district attorney, as appropriate under Sections
5074	17-18a-202 and 17-18a-203, to:
5075	(a) assist and represent the division;
5076	(b) initiate legal proceedings to protect vulnerable adults; and
5077	(c) take appropriate action to prosecute the alleged offenders.
5078	(2) If the county or district attorney fails to act upon the request of the division to
5079	provide legal assistance within five business days after the day on which the request is
5080	made:
5081	(a) the division may request the attorney general to act; and
5082	(b) the attorney general may, in the attorney general's discretion, assume the
5083	responsibilities and carry the action forward in place of the county or district attorney.
5084	
5085	[62A-3-311.] <u>26B-6-209.</u> Requests for records.
5086	(1) Requests for records maintained by Adult Protective Services shall be made in

5087	writing to Adult Protective Services.
5088	(2) Classification and disclosure of records shall be made in accordance with Title
5089	63G, Chapter 2, Government Records Access and Management Act.
5090	
5091	[62A-3-311.1.] <u>26B-6-210.</u> Statewide database Restricted use and access.
5092	(1) The division shall maintain a database for reports of vulnerable adult abuse,
5093	neglect, or exploitation made pursuant to this part.
5094	(2) The database shall include:
5095	(a) the names and identifying data of the alleged abused, neglected, or exploited
5096	vulnerable adult and the alleged perpetrator;
5097	(b) information regarding whether or not the allegation of abuse, neglect, or
5098	exploitation was found to be:
5099	(i) supported;
5100	(ii) inconclusive;
5101	(iii) without merit; or
5102	(iv) for reports for which the finding is made before May 5, 2008:
5103	(A) substantiated; or
5104	(B) unsubstantiated; and
5105	(c) any other information that may be helpful in furthering the purposes of this part, as
5106	determined by the division.
5107	(3) Information obtained from the database may be used only:
5108	(a) for statistical summaries compiled by the department that do not include names or
5109	other identifying data;
5110	(b) where identification of an individual as a perpetrator may be relevant in a
5111	determination regarding whether to grant or deny a license, privilege, or approval made by:
5112	(i) the department;
5113	(ii) the Division of Professional Licensing;
5114	(iii) the Bureau of Licensing, within the Department of Health;
5115	(iv) the Bureau of Emergency Medical Services and Preparedness, within the
5116	Department of Health, or a designee of the Bureau of Emergency Medical Services and
5117	Preparedness;
5118	(v) any government agency specifically authorized by statute to access or use the

5119	information in the database; or
5120	(vi) an agency of another state that performs a similar function to an agency
5121	described in Subsections (3)(b)(i) through (iv); or
5122	(c) as otherwise specifically provided by law.
5123	
5124	[62A-3-311.5.] 26B-6-211. Notice of supported finding Procedure for
5125	challenging finding Limitations.
5126	(1) (a) Except as provided in Subsection (1)(b), within 15 days after the day on which
5127	the division makes a supported finding that a person committed abuse, neglect, or
5128	exploitation of a vulnerable adult, the division shall serve the person with a notice of agency
5129	action, in accordance with Subsections (2) and (3).
5130	(b) The division may serve the notice described in Subsection (1)(a) within a
5131	reasonable time after the 15 day period described in Subsection (1)(a) if:
5132	(i) the delay is necessary in order to:
5133	(A) avoid impeding an ongoing criminal investigation or proceeding; or
5134	(B) protect the safety of a person; and
5135	(ii) the notice is provided before the supported finding is used as a basis to deny the
5136	person a license or otherwise adversely impact the person.
5137	(2) The division shall cause the notice described in Subsection (1)(a) to be served by
5138	personal service or certified mail.
5139	(3) The notice described in Subsection (1)(a) shall:
5140	(a) indicate that the division has conducted an investigation regarding alleged abuse,
5141	neglect, or exploitation of a vulnerable adult by the alleged perpetrator;
5142	(b) indicate that, as a result of the investigation described in Subsection (3)(a), the
5143	division made a supported finding that the alleged perpetrator committed abuse, neglect, or
5144	exploitation of a vulnerable adult;
5145	(c) include a summary of the facts that are the basis for the supported finding;
5146	(d) indicate that the supported finding may result in disqualifying the person from:
5147	(i) being licensed, certified, approved, or employed by a government agency;
5148	(ii) being employed by a service provider, person, or other entity that contracts with, or
5149	is licensed by, a government agency; or
5150	(iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii):

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5151	(e) indicate that, as a result of the supported finding, the alleged perpetrator's
5152	identifying information is listed in the database;
5153	(f) indicate that the alleged perpetrator may request a copy of the report of the alleged
5154	abuse, neglect, or exploitation; and
5155	(g) inform the alleged perpetrator of:
5156	(i) the right described in Subsection (4)(a); and
5157	(ii) the consequences of failing to exercise the right described in Subsection (4)(a) in
5158	a timely manner.
5159	(4) (a) The alleged perpetrator has the right, within 30 days after the day on which the
5160	notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a
5161	request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative
5162	Procedures Act.
5163	(b) If the alleged perpetrator fails to file a request for an informal adjudicative
5164	proceeding within the time described in Subsection (4)(a), the supported finding will become
5165	final and will not be subject to challenge or appeal.
5166	(5) At the hearing described in Subsection (4)(a), the division has the burden of
5167	proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse,
5168	neglect, or exploitation of a vulnerable adult.
5169	(6) Notwithstanding any provision of this section, an alleged perpetrator described in
5170	this section may not challenge a supported finding if a court of competent jurisdiction entered
5171	a finding in a proceeding to which the alleged perpetrator was a party, that the alleged
5172	perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which
5173	the supported finding is based.
5174	(7) A person who was listed in the database as a perpetrator before May 5, 2008, and
5175	who did not have an opportunity to challenge the division's finding that resulted in the listing,
5176	may at any time:
5177	(a) request that the division reconsider the division's finding; or
5178	(b) request an informal adjudicative proceeding, under Title 63G, Chapter 4,
5179	Administrative Procedures Act, to challenge the finding.

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[62A-3-312.] <u>26B-6-212.</u> Access to information in database.

The database and the adult protection case file:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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5183	(1) shall be made available to law enforcement agencies, the attorney general's
5184	office, city attorneys, the Division of Professional Licensing, and county or district attorney's
5185	offices;
5186	(2) shall be released as required under Subsection 63G-2-202(4)(c); and
5187	(3) may be made available, at the discretion of the division, to:
5188	(a) subjects of a report as follows:
5189	(i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation,
5190	or that adult's attorney or legal guardian; and
5191	(ii) a person identified in a report as having abused, neglected, or exploited a
5192	vulnerable adult, or that person's attorney; and
5193	(b) persons involved in an evaluation or assessment of the vulnerable adult as
5194	follows:
5195	(i) an employee or contractor of the department who is responsible for the evaluation
5196	or assessment of an adult protection case file;
5197	(ii) a multidisciplinary team approved by the division to assist Adult Protective
5198	Services in the evaluation, assessment, and disposition of a vulnerable adult case;
5199	(iii) an authorized person or agency providing services to, or responsible for, the care,
5200	treatment, assessment, or supervision of a vulnerable adult named in the report as a victim,
5201	when in the opinion of the division, that information will assist in the protection of, or provide
5202	other benefits to, the victim;
5203	(iv) a licensing authority for a facility, program, or person providing care to a victim
5204	named in a report; and
5205	(v) legally authorized protection and advocacy agencies when they represent a victim
5206	or have been requested by the division to assist on a case, including:
5207	(A) the Office of Public Guardian, created in Section 62A-14-103; and
5208	(B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.
5209	
5210	[62A-3-314.] 26B-6-213. Private right of action Estate asset Attorney fees.
5211	(1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has
5212	a private right of action against the perpetrator.

constitute an asset of the estate of the vulnerable adult.

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(2) Upon the death of a vulnerable adult, any cause of action under this section shall

- 5215 (3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.
 - (4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

[62A-3-315.] 26B-6-214. Protective services voluntary unless court ordered.

- (1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.
- (2) Protective services may be provided without a court order for a vulnerable adult who has the capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.
- (3) A court may order emergency protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to protective services in accordance with Section 62A-3-320.

[62A-3-316.] 26B-6-215. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

- (1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in Section 62A-3-315;
- (2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or
- 5245 (3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

5247	[62A-3-317.] <u>26B-6-216.</u> Venue for protective services proceedings.
5248	Venue for all proceedings related to protective services and emergency protective
5249	services under this [chapter] part is in the county where the vulnerable adult resides or is
5250	present.
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5252	[62A-3-320.] <u>26B-6-217.</u> Emergency protective services Forcible entry.
5253	(1) Adult Protective Services shall, immediately upon court order, provide emergency
5254	protective services to a court-designated vulnerable adult.
5255	(2) A court may, without notice, order emergency protective services immediately
5256	upon receipt of a petition for emergency protective services when a court finds that:
5257	(a) the subject of the petition is a vulnerable adult;
5258	(b) (i) the vulnerable adult does not have a court-appointed guardian or conservator;
5259	or
5260	(ii) the guardian or conservator is not effectively performing the guardian's or
5261	conservator's duties;
5262	(c) an emergency exists; and
5263	(d) the welfare, safety, or best interests of the vulnerable adult requires emergency
5264	protective services.
5265	(3) An emergency protective services order shall specifically designate the services
5266	that are approved and the facts that support the provision of those services.
5267	(4) Services authorized in an emergency protective services order may include
5268	hospitalization, nursing, custodial care, or a change in residence.
5269	(5) An emergency protective services order expires five business days after the day
5270	on which the court issues the order unless an appropriate party petitions for temporary
5271	guardianship pursuant to Section 75-5-310 or the division files a new petition for an
5272	emergency services order.
5273	(6) If a petition for guardianship or an additional emergency protective services
5274	petition is filed within five business days after the day on which the court issues the original
5275	emergency protective services order, a court may extend the duration of the original order an
5276	additional 15 business days after the day on which the subsequent petition is filed to allow for
5277	a court hearing on the petition.

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(7) To implement an emergency protective services order, a court may authorize

5279	forcible entry by a peace officer into the premises where the vulnerable adult may be found.
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5281	[62A-3-321.] 26B-6-218. Petition for injunctive relief when caretaker refuses to
5282	allow protective services.
5283	(1) When a vulnerable adult is in need of protective services and the caretaker
5284	refuses to allow the provision of those services, the division may petition the court for
5285	injunctive relief prohibiting the caretaker from interfering with the provision of protective
5286	services.
5287	(2) The division's petition under Subsection (1) shall allege facts sufficient to show
5288	that the vulnerable adult is in need of protective services, that the vulnerable adult either
5289	consents or lacks capacity to consent to those services, and that the caretaker refuses to
5290	allow the provision of those services.
5291	(3) The court may, on appropriate findings and conclusions in accordance with Rule
5292	65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering
5293	with the provision of protective services.
5294	(4) The petition under Subsection (1) may be joined with a petition under Section
5295	62A-3-320.
5296	
5297	[62A-3-322.] 26B-6-219. Medical cannabis use by a vulnerable adult or
5298	guardian.
5299	A peace officer or an employee or agent of the division may not solicit or provide, and
5300	a court may not order, emergency services for a vulnerable adult based solely on:
5301	(1) the vulnerable adult's possession or use of cannabis in accordance with Title 26,
5302	Chapter 61a, Utah Medical Cannabis Act; or
5303	(2) the guardian of the vulnerable adult assisting with the use of or possessing
5304	cannabis in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.
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5306	Part 3. Office of Public Guardian.
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5308	[62A-14-102.] <u>26B-6-301.</u> Definitions.
5309	As used in this [chapter] part:
5310	(1) "Conservator" is as defined in Section 75-1-201.

- 5311 (2) "Court" is as defined in Section 75-1-201.
- 5312 (3) "Estate" is as defined in Section 75-1-201.
- 5313 (4) "Guardian" is as defined in Section 75-1-201.
- 5314 (5) "Incapacitated" means a person who has been determined by a court, pursuant to 5315 Section 75-5-303, to be incapacitated, as defined in Section 75-1-201, after the office has 5316 determined that the person is 18 years of age or older and suffers from a mental or physical
- impairment as part of the prepetition assessment in Section 62A-14-107.
- 5318 (6) "Office" means the Office of Public Guardian.
 - (7) "Property" is as defined in Section 75-1-201.
- 5320 (8) "Ward" means an incapacitated person for whom the office has been appointed as guardian or conservator.

5323 [62A-14-103.] 26B-6-302. Office of Public Guardian -- Creation.

- (1) There is created within the department the Office of Public Guardian which has the powers and duties provided in this [chapter] part.
- 5326 (2) The office is under the administrative and general supervision of the executive director.

5329 [62A-14-104.] 26B-6-303. Director of the office -- Appointment -- Qualifications.

- (1) The director of the office shall be appointed by the executive director.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning guardianship and conservatorship.
- 5334 (3) The director is the administrative head of the office.
- 5336 [62A-14-105.] <u>26B-6-304.</u> Powers and duties of the office.
- 5337 (1) The office shall:

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- 5338 (a) develop and operate a statewide program to:
- (i) educate the public about the role and function of guardians and conservators;
- (ii) educate guardians and conservators on:
- (A) the duties of a guardian and a conservator; and
- 5342 (B) standards set by the National Guardianship Association for guardians and

5343	conservators; and
5344	(iii) serve as a guardian, conservator, or both for a ward upon appointment by a court
5345	when no other person is able and willing to do so and the office petitioned for or agreed in
5346	advance to the appointment;
5347	(b) possess and exercise all the powers and duties specifically given to the office by
5348	virtue of being appointed as guardian or conservator of a ward, including the power to access
5349	a ward's records;
5350	(c) review and monitor the personal and, if appropriate, financial status of each ward
5351	for whom the office has been appointed to serve as guardian or conservator;
5352	(d) train and monitor each employee and volunteer, and monitor each contract
5353	provider to whom the office has delegated a responsibility for a ward;
5354	(e) retain all court-delegated powers and duties for a ward;
5355	(f) report on the personal and financial status of a ward as required by a court in
5356	accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their
5357	Property;
5358	(g) handle a ward's funds in accordance with the department's trust account system;
5359	(h) request that the department's audit plan, established pursuant to Section
5360	63I-5-401, include the requirement of an annual audit of all funds and property held by the
5361	office on behalf of wards;
5362	(i) maintain accurate records concerning each ward, the ward's property, and office
5363	services provided to the ward;
5364	(j) make reasonable and continuous efforts to find a family member, friend, or other
5365	person to serve as a ward's guardian or conservator;
5366	(k) after termination as guardian or conservator, distribute a ward's property in
5367	accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their
5368	Property; and
5369	(I) submit recommendations for changes in state law and funding to the governor and
5370	the Legislature and report to the governor and Legislature, upon request.
5371	(2) The office may:
5372	(a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons Under
5373	Disability and Their Property, to be appointed an incapacitated person's guardian,

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conservator, or both after conducting a prepetition assessment under Section 62A-14-107;

- (b) develop and operate a statewide program to recruit, train, supervise, and monitor 5375 5376 volunteers to assist the office in providing quardian and conservator services;
- (c) delegate one or more responsibilities for a ward to an employee, volunteer, or 5377 contract provider, except as provided in Subsection 62A-14-107(1): 5378
- 5379 (d) solicit and receive private donations to provide guardian and conservator services 5380 under this [chapter] part; and
 - (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) effectuate policy; and
- 5384 (ii) carry out the office's role as guardian and conservator of wards as provided in this 5385 chapter.

[62A-14-107.] 26B-6-305. Prepetition assessment and plan. 5387

- (1) Before the office may file a petition in court to be appointed guardian or conservator of a person, the office shall:
- (a) conduct a face-to-face needs assessment, by someone other than a volunteer, to determine whether the person suffers from a mental or physical impairment that renders the person substantially incapable of:
 - (i) caring for his personal safety;
 - (ii) managing his financial affairs; or
- (iii) attending to and providing for such necessities as food, shelter, clothing, and medical care, to the extent that physical injury or illness may result;
- (b) assess the financial resources of the person based on information supplied to the office at the time of assessment;
- (c) inquire and, if appropriate, search to determine whether any other person may be willing and able to serve as the person's guardian or conservator; and
- (d) determine the form of quardianship or conservatorship to request of a court, if any, giving preference to the least intensive form of guardianship or conservatorship, consistent with the best interests of the person.
- (2) The office shall prepare an individualized guardianship or conservator plan for each ward within 60 days of appointment.

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5407	[62A-14-108.] <u>26B-6-306.</u> Office volunteers.
5408	(1) A person who desires to be an office volunteer shall:
5409	(a) possess demonstrated personal characteristics of honesty, integrity, compassion,
5410	and concern for incapacitated persons; and
5411	(b) upon request, submit information for a background check pursuant to Section
5412	26B-1-211.
5413	(2) An office volunteer may not receive compensation or benefits, but may be
5414	reimbursed by the office for expenses actually and reasonably incurred, consistent with Title
5415	67, Chapter 20, Volunteer Government Workers Act.
5416	(3) An office volunteer is immune from civil liability pursuant to Title 63G, Chapter 8,
5417	Immunity for Persons Performing Voluntary Services Act.
5418	
5419	[62A-14-109.] <u>26B-6-307.</u> Contract for services.
5420	(1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the office may
5421	contract with one or more providers to perform guardian and conservator duties.
5422	(2) The office shall review and monitor the services provided by a contract provider to
5423	a ward for whom the office has been appointed guardian or conservator.
5424	
5425	[62A-14-110.] <u>26B-6-308.</u> Court, legal, and other costs.
5426	(1) The office may not be appointed as the guardian or conservator of a person
5427	unless the office petitioned for or agreed in advance to the appointment.
5428	(2) Except as provided in Subsection (4), the court shall order the ward or the ward's
5429	estate to pay for the cost of services rendered under this chapter, including court costs and
5430	reasonable attorneys' fees.
5431	(3) If the office recovers attorneys' fees under Subsection (2), the office shall transmit
5432	those fees to the attorneys who represented the ward or the office in connection with the
5433	ward's case.
5434	(4) If a ward is indigent, the office shall provide guardian and conservator services
5435	free of charge and shall make reasonable efforts to secure pro bono legal services for the
5436	ward.

(5) Under no circumstances may court costs or attorneys' fees be assessed to the

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office.

5439	[62A-14-111.] <u>26B-6-309.</u> Duty of the county attorney or district attorney.
5440	(1) The attorney general shall advise the office on legal matters and represent the
5441	office in legal proceedings.
5442	(2) Upon the request of the attorney general, a county attorney may represent the
5443	office in connection with the filing of a petition for appointment as guardian or conservator of
5444	an incapacitated person and with routine, subsequent appearances.
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5446	Part 4. Division of Services for People with Disabilities.
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5448	[62A-5-101.] <u>26B-6-401.</u> Definitions.
5449	As used in this [chapter] <u>part</u> :
5450	(1) "Approved provider" means a person approved by the division to provide
5451	home-based services.
5452	(2) "Board" means the Utah State Developmental Center Board created under
5453	Section 62A-5-202.5.
5454	(3) (a) "Brain injury" means an acquired injury to the brain that is neurological in
5455	nature, including a cerebral vascular accident.
5456	(b) "Brain injury" does not include a deteriorating disease.
5457	(4) "Designated intellectual disability professional" means:
5458	(a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
5459	who:
5460	(i) (A) has at least one year of specialized training in working with persons with an
5461	intellectual disability; or
5462	(B) has at least one year of clinical experience with persons with an intellectual
5463	disability; and
5464	(ii) is designated by the division as specially qualified, by training and experience, in
5465	the treatment of an intellectual disability; or
5466	(b) a clinical social worker, certified social worker, marriage and family therapist, or
5467	professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
5468	Practice Act, who:
5469	(i) has at least two years of clinical experience with persons with an intellectual
5470	disability; and

(ii) is designated by the division as specially qualified, by training and experience, in 5471 5472 the treatment of an intellectual disability. (5) "Deteriorating disease" includes: 5473 (a) multiple sclerosis: 5474 5475 (b) muscular dystrophy; 5476 (c) Huntington's chorea; (d) Alzheimer's disease; 5477 5478 (e) ataxia; or (f) cancer. 5479 5480 (6) "Developmental center" means the Utah State Developmental Center, established 5481 in accordance with Part 2, Utah State Developmental Center. 5482 (7) "Director" means the director of the Division of Services for People with Disabilities. 5483 5484 (8) "Direct service worker" means a person who provides services to a person with a 5485 disability: 5486 (a) when the services are rendered in: 5487 (i) the physical presence of the person with a disability; or 5488 (ii) a location where the person rendering the services has access to the physical 5489 presence of the person with a disability; and 5490 (b) (i) under a contract with the division; (ii) under a grant agreement with the division; or 5491 5492 (iii) as an employee of the division. 5493 (9) (a) "Disability" means a severe, chronic disability that: (i) is attributable to: 5494 5495 (A) an intellectual disability; 5496 (B) a condition that qualifies a person as a person with a related condition, as defined 5497 in 42 C.F.R. 435.1010; (C) a physical disability; or 5498 5499 (D) a brain injury: 5500 (ii) is likely to continue indefinitely; 5501 (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a 5502 substantial functional limitation in three or more of the following areas of major life activity:

5503 (I) self-care; (II) receptive and expressive language; 5504 5505 (III) learning; (IV) mobility; 5506 5507 (V) self-direction; 5508 (VI) capacity for independent living; or (VII) economic self-sufficiency; or 5509 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial 5510 limitation in three or more of the following areas: 5511 5512 (I) memory or cognition; 5513 (II) activities of daily life; 5514 (III) judgment and self-protection; (IV) control of emotions; 5515 5516 (V) communication; 5517 (VI) physical health; or 5518 (VII) employment; and 5519 (iv) requires a combination or sequence of special interdisciplinary or generic care, 5520 treatment, or other services that: 5521 (A) may continue throughout life; and 5522 (B) must be individually planned and coordinated. 5523 (b) "Disability" does not include a condition due solely to: 5524 (i) mental illness; 5525 (ii) personality disorder; 5526 (iii) deafness or being hard of hearing; 5527 (iv) visual impairment; (v) learning disability; 5528 (vi) behavior disorder; 5529 (vii) substance abuse; or 5530 (viii) the aging process. 5531 (10) "Division" means the Division of Services for People with Disabilities. 5532 (11) "Eligible to receive division services" or "eligibility" means qualification, based on 5533 criteria established by the division, to receive services that are administered by the division. 5534

5535	(12) "Endorsed program" means a facility or program that:
5536	(a) is operated:
5537	(i) by the division; or
5538	(ii) under contract with the division; or
5539	(b) provides services to a person committed to the division under Part 3, Admission to
5540	an Intermediate Care Facility for People with an Intellectual Disability.
5541	(13) "Licensed physician" means:
5542	(a) an individual licensed to practice medicine under:
5543	(i) Title 58, Chapter 67, Utah Medical Practice Act; or
5544	(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
5545	(b) a medical officer of the United States Government while in this state in the
5546	performance of official duties.
5547	(14) "Limited support services" means services that are administered by the division
5548	to individuals with a disability:
5549	(a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for
5550	Medicare and Medicaid Services that permits the division to limit services to an individual
5551	who is eligible to receive division services; and
5552	(b) through a program that:
5553	(i) was not operated by the division on or before January 1, 2020; and
5554	(ii) (A) limits the kinds of services that an individual may receive; or
5555	(B) sets a maximum total dollar amount for program services provided to each
5556	individual.
5557	(15) "Physical disability" means a medically determinable physical impairment that
5558	has resulted in the functional loss of two or more of a person's limbs.
5559	(16) "Public funds" means state or federal funds that are disbursed by the division.
5560	(17) "Resident" means an individual under observation, care, or treatment in an
5561	intermediate care facility for people with an intellectual disability.
5562	(18) "Sustainability fund" means the Utah State Developmental Center Long-Term
5563	Sustainability Fund created in Section 62A-5-206.7.
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5565	[62A-5-102.] 26B-6-402. Division of Services for People with Disabilities
5566	Creation Authority Direction Provision of services.

- (1) There is created within the department the Division of Services for People with 5567 5568 Disabilities, under the administrative direction of the executive director of the department.
- (2) In accordance with this [chapter] part, the division has the responsibility to plan 5569 5570 and deliver an appropriate array of services and supports to persons with disabilities and 5571 their families in this state.
 - (3) Within appropriations from the Legislature, the division shall provide services to any individual with a disability who is eligible to receive division services.
 - (4) (a) Except as provided in Subsection (4)(c), any new appropriations designated to serve eligible individuals waiting for services from the division shall be allocated, as determined by the division by rule based on the:
- 5577 (i) severity of the disability;

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- (ii) urgency of the need for services;
- 5579 (iii) ability of a parent or quardian to provide the individual with appropriate care and 5580 supervision; and
- 5581 (iv) length of time during which the individual has not received services from the 5582 division.
- 5583 (b) Funds from Subsection (4)(a) that are not spent by the division at the end of the 5584 fiscal year may be used as set forth in Subsection (7).
 - (c) Subsections (4)(a) and (b) do not apply to any new appropriations designated to provide limited support services.
 - (5) The division:
- 5588 (a) has the functions, powers, duties, rights, and responsibilities described in Section 5589 62A-5-103; and
 - (b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out the responsibilities described in Subsection (5)(a).
 - (6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support that the division provides to an individual with a disability:
 - (a) are provided in the least restrictive and most enabling environment;
 - (b) ensure opportunities to access employment; and
 - (c) enable reasonable personal choice in selecting services and support that:
- 5598 (i) best meet individual needs; and

(ii) promote: 5599 (A) independence; 5600 5601 (B) productivity; and (C) integration in community life. 5602 5603 (7) (a) Appropriations to the division are nonlapsing. 5604 (b) After an individual stops receiving services under this section, the division shall 5605 use the funds that paid for the individual's services to provide services under this section to another eligible individual in an intermediate care facility transitioning to division services, if 5606 5607 the funds were allocated under a program established under Section 26-18-3 to transition 5608 individuals with intellectual disabilities from an intermediate care facility. 5609 (c) Except as provided in Subsection (7)(b), if an individual receiving services under 5610 Subsection (4)(a) ceases to receive those services, the division shall use the funds that were allocated to that individual to provide services to another eligible individual waiting for 5611 5612 services as described in Subsection (4)(a). 5613 (d) Funds unexpended by the division at the end of the fiscal year may be used only 5614 for one-time expenditures unless otherwise authorized by the Legislature. 5615 (e) A one-time expenditure under this section: 5616 (i) is not an entitlement; 5617 (ii) may be withdrawn at any time; and (iii) may provide short-term, limited services, including: 5618 (A) respite care; 5619 5620 (B) service brokering; (C) family skill building and preservation classes; 5621 5622 (D) after school group services; and 5623 (E) other professional services. 5624 [62A-5-103.] 26B-6-403. Responsibility and authority of division. 5625 (1) For purposes of this section "administer" means to: 5626 5627 (a) plan; (b) develop; 5628 5629 (c) manage; (d) monitor; and 5630

(e) conduct certification reviews. 5631 (2) The division has the authority and responsibility to: 5632 (a) administer an array of services and supports for persons with disabilities and their 5633 5634 families throughout the state: 5635 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in 5636 5637 Subsection (2)(a); (c) consistent with Section 62A-5-206, supervise the programs and facilities of the 5638 Developmental Center; 5639 5640 (d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of: 5641 5642 (i) outreach; (ii) information and referral; 5643 5644 (iii) prevention; 5645 (iv) technical assistance; and 5646 (v) public awareness; (e) supervise the programs and facilities operated by, or under contract with, the 5647 5648 division: 5649 (f) cooperate with other state, governmental, and private agencies that provide 5650 services to a person with a disability; 5651 (g) subject to Subsection (3), ensure that a person with a disability is not deprived of 5652 that person's constitutionally protected rights without due process procedures designed to 5653 minimize the risk of error when a person with a disability is admitted to an intermediate care facility for people with an intellectual disability, including: 5654 5655 (i) the developmental center; and (ii) facilities within the community; 5656 (h) determine whether to approve providers; 5657 (i) monitor and sanction approved providers, as specified in the providers' contract; 5658 (i) subject to Section 62A-5-103.5, receive and disburse public funds: 5659 5660 (k) review financial actions of a provider who is a representative payee appointed by 5661 the Social Security Administration; (I) establish standards and rules for the administration and operation of programs 5662

5663	conducted by, or under contract with, the division;
5664	(m) approve and monitor division programs to insure compliance with the board's
5665	rules and standards;
5666	(n) establish standards and rules necessary to fulfill the division's responsibilities
5667	under Part 2, Utah State Developmental Center, and Part 3, Admission to an Intermediate
5668	Care Facility for People with an Intellectual Disability, with regard to an intermediate care
5669	facility for people with an intellectual disability;
5670	(o) assess and collect equitable fees for a person who receives services provided
5671	under this chapter;
5672	(p) maintain records of, and account for, the funds described in Subsection (2)(o);
5673	(q) establish and apply rules to determine whether to approve, deny, or defer the
5674	division's services to a person who is:
5675	(i) applying to receive the services; or
5676	(ii) currently receiving the services;
5677	(r) in accordance with state law, establish rules:
5678	(i) relating to an intermediate care facility for people with an intellectual disability that
5679	is an endorsed program; and
5680	(ii) governing the admission, transfer, and discharge of a person with a disability;
5681	(s) manage funds for a person residing in a facility operated by the division:
5682	(i) upon request of a parent or guardian of the person; or
5683	(ii) under administrative or court order; and
5684	(t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons
5685	with Disabilities.
5686	(3) The due process procedures described in Subsection (2)(g):
5687	(a) shall include initial and periodic reviews to determine the constitutional
5688	appropriateness of the placement; and
5689	(b) with regard to facilities in the community, do not require commitment to the
5690	division.
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5692	[62A-5-104.] <u>26B-6-404.</u> Director Qualifications Responsibilities.
5693	(1) The director of the division shall be appointed by the executive director.

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(2) The director shall have a bachelor's degree from an accredited university or

5695 college, be experienced in administration, and be knowledgeable in developmental disabilities, intellectual disabilities, and other disabilities.

- (3) The director is the administrative head of the division.
- (4) The director shall appoint the superintendent of the developmental center and the necessary and appropriate administrators for other facilities operated by the division with the concurrence of the executive director.

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[62A-5-105.] 26B-6-405. Division responsibilities -- Policy mediation.

- (1) The division shall establish its rules in accordance with:
 - (a) the policy of the Legislature as set forth by this chapter; and
- (b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 5706 (2) The division shall:
- 5707 (a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;
- 5709 (b) establish rules for the assessment and collection of fees for programs within the 5710 division:
 - (c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay and implement the schedule with respect to service recipients and their families where not otherwise prohibited by federal law or regulation or not otherwise provided for in Section 62A-5-109;
 - (d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;
 - (e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection (2)(d);
 - (f) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding;
- 5725 (g) review implementation and compliance by the division with policies established by the board to ensure that the policies established by the Legislature in this chapter are carried

5727	out; and
5728	(h) annually report to the executive director.
5729	(3) The executive director shall mediate any differences which arise between the
5730	policies of the division and those of any other policy board or division in the department.
5731	
5732	[62A-5-106.] <u>26B-6-406.</u> Powers of other state agencies Severability.
5733	Nothing in this part shall be construed to supersede or limit the authority granted by
5734	law to any other state agency. If any provision of this part, or the application of any provision
5735	to the person or circumstance, is held invalid, the remainder of this part shall not be affected.
5736	
5737	[62A-5-103.1.] <u>26B-6-407.</u> Program for provision of supported employment
5738	services.
5739	(1) There is established a program for the provision of supported employment
5740	services to be administered by the division.
5741	(2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
5742	Administrative Rulemaking Act, as necessary for the implementation and administration of
5743	the program described in this section.
5744	(3) In accordance with Subsection (4), within funds appropriated by the Legislature for
5745	the program described in this section, the division shall provide supported employment
5746	services to a person with a disability who:
5747	(a) is eligible to receive services from the division;
5748	(b) has applied for, and is waiting to, receive services from the division;
5749	(c) is not receiving other ongoing services from the division;
5750	(d) is not able to receive sufficient supported employment services from other
5751	sources;
5752	(e) the division determines would substantially benefit from the provision of supported
5753	employment services; and
5754	(f) does not require the provision of other ongoing services from the division in order
5755	to substantially benefit from the provision of supported employment services.
5756	(4) (a) The division shall provide supported employment services under this section
5757	outside of the prioritization criteria established by the division for the receipt of other services
5758	from the division.

- 5759 (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- 5761 (5) It is the intent of the Legislature that the services provided under the program described in this section:
- 5763 (a) shall be provided separately from the Medicaid program described in Title XIX of 5764 the Social Security Act;
 - (b) may not be supported with Medicaid funds;
- (c) may not be provided as part of a Medicaid waiver;
- 5767 (d) do not constitute an entitlement of any kind; and
- (e) may be withdrawn from a person at any time.
- 5769 (6) The division shall report to the Health and Human Services Interim Committee in 5770 even calendar years regarding the success and progress of employment services offered 5771 under this section.

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[62A-5-103.2.] <u>26B-6-408.</u> Pilot Program for the Provision of Family

Preservation Services.

- 5775 (1) There is established a pilot program for the provision of family preservation 5776 services to a person with a disability and that person's family, beginning on July 1, 2007, and 5777 ending on July 1, 2009.
 - (2) The family preservation services described in Subsection (1) may include:
- 5779 (a) family skill building classes;
 - (b) respite hours for class attendance; or
- 5781 (c) professional intervention.
- 5782 (3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
 5783 Administrative Rulemaking Act, as necessary for the implementation and administration of
 5784 this section.
- 5785 (4) In accordance with Subsection (5), within funds appropriated by the Legislature for 5786 the pilot program described in this section, the division shall provide family preservation 5787 services to a person with a disability, and that person's family, if that person:
 - (a) is eligible to receive services from the division:
- (b) has applied for, and is willing to receive, services from the division;
 - (c) is not receiving other ongoing services from the division;

5791 (d) is not able to receive sufficient family preservation services from other sources; 5792 (e) is determined by the division to be a person who would substantially benefit from the provision of family preservation services; and 5793 5794 (f) does not require the provision of other ongoing services from the division in order 5795 to substantially benefit from the provision of family preservation services. 5796 (5) (a) The division shall provide family preservation services under this section 5797 outside of the prioritization criteria established by the division for the receipt of other services 5798 from the division. 5799 (b) The division shall establish criteria to determine the priority, between persons 5800 eligible for services under this section, for receiving services under this section. (6) It is the intent of the Legislature that the services provided under the pilot program 5801 described in this section: 5802 5803 (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act; 5804 5805 (b) may not be supported with Medicaid funds; 5806 (c) may not be provided as part of a Medicaid waiver; 5807 (d) do not constitute an entitlement of any kind; and 5808 (e) may be withdrawn from a person at any time. 5809 5810 [62A-5-103.3.] 26B-6-409. Employment first emphasis on the provision of 5811 services. 5812 (1) When providing services to a person with a disability under this chapter, the 5813 division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person 5814 5815 in obtaining and retaining meaningful and gainful employment that enables the person to: 5816 (a) purchase goods and services; 5817 (b) establish self-sufficiency; and 5818 (c) exercise economic control of the person's life. 5819 (2) The division shall develop a written plan to implement the policy described in 5820 Subsection (1) that includes:

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(a) assessing the strengths and needs of a person with a disability;

(b) customizing strength-based approaches to obtaining employment;

5823	(c) expecting, encouraging, providing, and rewarding:
5824	(i) integrated employment in the workplace at competitive wages and benefits; and
5825	(ii) self-employment;
5826	(d) developing partnerships with potential employers;
5827	(e) maximizing appropriate employment training opportunities;
5828	(f) coordinating services with other government agencies and community resources;
5829	(g) to the extent possible, eliminating practices and policies that interfere with the
5830	policy described in Subsection (1); and
5831	(h) arranging sub-minimum wage work or volunteer work when employment at market
5832	rates cannot be obtained.
5833	(3) The division shall, on an annual basis:
5834	(a) set goals to implement the policy described in Subsection (1) and the plan
5835	described in Subsection (2);
5836	(b) determine whether the goals for the previous year have been met; and
5837	(c) modify the plan described in Subsection (2) as needed.
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5839	[62A-5-103.5.] <u>26B-6-410.</u> Disbursal of public funds Background check of a
5840	direct service worker.
5841	(1) For purposes of this section, "office" means the same as that term is defined in
5842	Section 62A-2-101.
5843	(2) Public funds may not be disbursed to pay a direct service worker for personal
5844	services rendered to a person unless the office approves the direct service worker to have
5845	direct access and provide services to a child or a vulnerable adult pursuant to Section
5846	62A-2-120.
5847	(3) For purposes of Subsection (2), the office shall conduct a background check of a
5848	direct service worker:
5849	(a) before public funds are disbursed to pay the direct service worker for the personal
5850	services described in Subsection (2); and
5851	(b) using the same procedures established for a background check of an applicant for
5852	a license under Section 62A-2-120.
5853	(4) A child who is in the legal custody of the department or any of the department's
5854	divisions may not be placed with a direct service worker unless, before the child is placed

- with the direct service worker, the direct service worker passes a background check, pursuant to the requirements of Subsection 62A-2-120(14).
- 5857 (5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:
 - (a) the provisions of this section are not applicable to a direct service worker employed by the public transit district; and
 - (b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:
 - (i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 62A-2-120; and
 - (ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

[62A-5-109.] 26B-6-411. Parent liable for cost and support of minor -- Guardian liable for costs.

- (1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for the support of the child in accordance with Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services, until the person reaches 18 years of age.
- (2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 62A-5-110, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.
- (3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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5887	guardian for the support or maintenance of that person, it shall be repaid upon demand.
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5889	[62A-5-110.] 26B-6-412. Discretionary trust for an individual with a disability
5890	Impact on state services.
5891	(1) For purposes of this section:
5892	(a) "Discretionary trust for an individual with a disability" means a trust:
5893	(i) that is established for the benefit of an individual who, at the time the trust is
5894	created, is under age 65 and has a disability, as defined in 42 U.S.C. Sec. 1382c;
5895	(ii) under which the trustee has discretionary power to determine distributions;
5896	(iii) under which the individual may not control or demand payments unless an abuse
5897	of the trustee's duties or discretion is shown;
5898	(iv) that contains the assets of the individual and is established for the benefit of the
5899	individual by the individual, a court, or a parent, grandparent, or legal guardian of the
5900	individual;
5901	(v) that is irrevocable, except that the trust document may provide that the trust be
5902	terminated if the individual no longer has a disability, as defined in 42 U.S.C. Sec. 1382c;
5903	(vi) that is invalid as to any portion funded by property that is or may be subject to a
5904	lien by the state; and
5905	(vii) that provides that, upon the death of the individual, the state will receive all
5906	amounts remaining in the trust, up to an amount equal to the total medical assistance paid on
5907	behalf of the individual.
5908	(b) "Medical assistance" means the same as that term is defined in Section 26-18-2.
5909	(2) A state agency providing services or support to an individual with a disability may:
5910	(a) waive application of Subsection (1)(a)(v) with respect to that individual if the state
5911	agency determines that application of the criteria would place an undue hardship upon that
5912	individual; and
5913	(b) define, by rule, what constitutes "undue hardship" for purposes of this section.
5914	(3) A discretionary trust for an individual with a disability is not liable for
5915	reimbursement or payment to the state or any state agency, for financial aid or services
5916	provided to that individual except:

under the control of the beneficiary with a disability; or

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(a) to the extent that the trust property has been distributed directly to or is otherwise

- 5919 (b) as provided in Subsection (1)(a)(vi). 5920 (4) Property, goods, and services that are purchased or owned by a discretionary trust for an individual with a disability and that are used or consumed by a beneficiary with a 5921 5922 disability shall not be considered trust property that is distributed to or under the control of 5923 the beneficiary. 5924 (5) The benefits that an individual with a disability is otherwise legally entitled to may 5925
 - not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that individual.
 - (6) All state agencies shall disregard a discretionary trust for an individual with a disability as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.
 - (7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

[62A-5-402.] 26B-6-413. Scope of home based services -- Principles --Services for individuals younger than 11 years old.

- (1) The purpose of this section is to provide support to families in their role as primary caregivers for family members with disabilities.
- (1) (2) (a) To enable a person with a disability and the person's family to select services and supports that best suit their needs and preferences, the division shall, within appropriations from the Legislature, provide services and supports under this part by giving direct financial assistance to the parent or guardian of a person with a disability who resides at home.
- (b) The dollar value of direct financial assistance is determined by the division based 5942 5943 on:
 - (i) appropriations from the Legislature; and
 - (ii) the needs of the person with a disability.
- (c) In determining whether to provide direct financial assistance to the family, the 5946 5947 division shall consider:
 - (i) the family's preference; and
 - (ii) the availability of approved providers in the area where the family resides.
 - (d) If the division provides direct financial assistance, the division:

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5951	(i) shall require the family to account for the use of that financial assistance; and
5952	(ii) shall tell the person with a disability or the person's parent or guardian how long
5953	the direct financial assistance is intended to provide services and supports before additional
5954	direct financial assistance is issued.
5955	(e) Except for eligibility determination services directly connected to the provision of
5956	direct financial assistance, service coordination is not provided under this part by the division
5957	unless the person with a disability or the person's parent or guardian uses the direct financial
5958	assistance to purchase such services.
5959	[(2)] (3) The following principles shall be used as the basis for supporting families
5960	who care for family members with disabilities:
5961	(a) all children, regardless of disability, should reside in a family-like environment;
5962	(b) families should receive the support they need to care for their children at home;
5963	(c) services should:
5964	(i) focus on the person with a disability;
5965	(ii) take into consideration the family of the person described in Subsection (2)(c)(i);
5966	(iii) be sensitive to the unique needs, preferences, and strengths of individual families
5967	and
5968	(iv) complement and reinforce existing sources of help and support that are available
5969	to each family.
5970	(4) Except as provided in Subsection (5), after June 30, 1996, the division may not
5971	provide residential services to persons with disabilities who are under 11 years of age.
5972	(5) The prohibition of Subsection (4) does not include residential services that are
5973	provided:
5974	(a) for persons in the custody of the Division of Child and Family Services;
5975	(b) under a plan for home-based services, including respite and temporary residential
5976	care or services provided by a professional parent under contract with the division; or
5977	(c) after a written finding by the director that out-of-home residential placement is the
5978	most appropriate way to meet the needs of the person with disabilities and his family.
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5980	Part 5. Utah State Developmental Center.
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5982	26B-6-501. Definitions.

5983	The definitions in Section 26B-6-401 apply to this part.
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5985	[62A-5-201.] <u>26B-6-502.</u> Utah State Developmental Center.
5986	(1) The intermediate care facility for people with an intellectual disability located in
5987	American Fork City, Utah County, shall be known as the "Utah State Developmental Center."
5988	(2) Within appropriations authorized by the Legislature, the role and function of the
5989	developmental center is to:
5990	(a) provide care, services, and treatment to persons described in Subsection (3); and
5991	(b) provide the following services and support to persons with disabilities who do not
5992	reside at the developmental center:
5993	(i) psychiatric testing;
5994	(ii) specialized medical treatment and evaluation;
5995	(iii) specialized dental treatment and evaluation;
5996	(iv) family and client special intervention;
5997	(v) crisis management;
5998	(vi) occupational, physical, speech, and audiology services; and
5999	(vii) professional services, such as education, evaluation, and consultation, for
6000	families, public organizations, providers of community and family support services, and
6001	courts.
6002	(3) Except as provided in Subsection (6), within appropriations authorized by the
6003	Legislature, and notwithstanding the provisions of Part 3, Admission to an Intermediate Care
6004	Facility for People with an Intellectual Disability, only the following persons may be residents
6005	of, be admitted to, or receive care, services, or treatment at the developmental center:
6006	(a) persons with an intellectual disability;
6007	(b) persons who receive services and supports under Subsection (2)(b); and
6008	(c) persons who require at least one of the following services from the developmental
6009	center:
6010	(i) continuous medical care;
6011	(ii) intervention for conduct that is dangerous to self or others; or
6012	(iii) temporary residential assessment and evaluation.
6013	(4) (a) Except as provided in Subsection (6), the division shall, in the division's
6014	discretion:

- 6015 (i) place residents from the developmental center into appropriate less restrictive 6016 placements; and
- 6017 (ii) determine each year the number to be placed based upon the individual assessed 6018 needs of the residents.
 - (b) The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.
 - (5) Except as provided in Subsection (7), within appropriations authorized by the Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing that the developmental center is the most appropriate placement for that person.
 - (6) (a) If the division determines, pursuant to Utah's Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, that a person who otherwise qualifies for placement in an intermediate care facility for people with an intellectual disability should receive services in a home or community-based setting, the division shall:
 - (i) if the person does not have a legal representative or legal guardian:
 - (A) inform the person of any feasible alternatives under the waiver; and
 - (B) give the person the choice of being placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting; or
 - (ii) if the person has a legal representative or legal guardian:
 - (A) inform the legal representative or legal guardian of any feasible alternatives under the waiver; and
 - (B) give the legal representative or legal guardian the choice of having the person placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting.
 - (b) If a person chooses, under Subsection (6)(a)(i), to be placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:
 - (i) ask the person whether the person prefers to be placed in the developmental

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center rather than a private intermediate care facility for people with an intellectual disability; 6047 6048 and

- (ii) if the person expresses a preference to be placed in the developmental center:
- (A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or
- (B) (I) strongly consider the person's preference to be placed in the developmental center if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and
- (II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.
- (c) If a legal representative or legal quardian chooses, under Subsection (6)(a)(ii), to have the person placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:
- (i) ask the legal representative or legal guardian whether the legal representative or legal guardian prefers to have the person placed in the developmental center rather than a private intermediate care facility for people with an intellectual disability; and
- (ii) if the legal representative or legal guardian expresses a preference to have the person placed in the developmental center:
- (A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or
- (B) (I) strongly consider the legal representative's or legal guardian's preference for the person's placement if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and
- (II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.
- (7) The certification described in Subsection (5) is not required for a person who receives services and support under Subsection (2)(b).

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6079	[62A-5-202.] <u>26B-6-503.</u> Developmental center within division.
6080	The programs and facilities of the developmental center are within the division, and
6081	under the policy direction of the division.
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6083	[62A-5-203.] <u>26B-6-504.</u> Operation, maintenance, and repair of developmental
6084	center buildings and grounds.
6085	(1) The division shall operate, maintain, and repair the buildings, grounds, and
6086	physical properties of the developmental center. However, the roads and driveways on the
6087	grounds of the developmental center shall be maintained by the Department of
6088	Transportation.
6089	(2) The division has authority to make improvements to the buildings, grounds, and
6090	physical properties of the developmental center, as it deems necessary for the care and
6091	safety of the residents.
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6093	[62A-5-205.] <u>26B-6-505.</u> State Board of Education Education of children at
6094	developmental center.
6095	(1) The State Board of Education is responsible for the education of school-aged
6096	children at the developmental center.
6097	(2) In order to fulfill its responsibility under Subsection (1), the State Board of
6098	Education shall, where feasible, contract with local school districts or other appropriate
6099	agencies to provide educational and related administrative services.
6100	(3) Medical, residential, and other services that are not the responsibility of the State
6101	Board of Education or other state agencies are the responsibility of the division.
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6103	[62A-5-206.] <u>26B-6-506.</u> Powers and duties of division.
6104	The powers and duties of the division, with respect to the developmental center are as
6105	follows:
6106	(1) to establish rules, not inconsistent with law, for the government of the
6107	developmental center;
6108	(2) to establish rules governing the admission and discharge of persons with an

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intellectual disability in accordance with state law;

(3) to employ necessary medical and other professional personnel to assist in

establishing rules relating to the developmental center and to the treatment and training of persons with an intellectual disability at the center;

- (4) to transfer a person who has been committed to the developmental center under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, to any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facilities or programs available meet the needs indicated, and if transfer would be in the best interest of that person. A person transferred shall remain under the jurisdiction of the division;
- (5) the developmental center may receive a person who meets the requirements of Subsection 62A-5-201(3) from any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facility or programs of the developmental center meet those needs, and if transfer would be in the best interest of that person. A person so received by the developmental center remains under the jurisdiction of the division;
- (6) to manage funds for a person residing in the developmental center, upon request by that person's parent or guardian, or upon administrative or court order;
- (7) to charge and collect a fair and equitable fee from developmental center residents, parents who have the ability to pay, or guardians where funds for that purpose are available; and
- (8) supervision and administration of security responsibilities for the developmental center is vested in the division. The executive director may designate, as special function officers, individuals to perform special security functions for the developmental center that require peace officer authority. Those special function officers may not become or be designated as members of the Public Safety Retirement System.

[62A-5-206.6.] 26B-5-507. Utah State Developmental Center land and water rights.

- (1) As used in this section, "long-term lease" means:
 - (a) a lease with a term of five years or more; or
- 6140 (b) a lease with a term of less than five years that may be unilaterally renewed by the 6141 lessee.
 - (2) (a) Notwithstanding Section 65A-4-1, any sale, long-term lease, or other

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WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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6143	disposition of real property, water rights, or water shares associated with the developmental
6144	center shall be conducted as provided in this Subsection (2).
6145	(b) The board shall:
6146	(i) approve the sale, long-term lease, or other disposition of real property, water rights,
6147	or water shares associated with the developmental center;
6148	(ii) secure the approval of the Legislature before offering the real property, water
6149	rights, or water shares for sale, long-term lease, or other disposition; and
6150	(iii) if the Legislature's approval is secured, as described in Subsection (2)(b)(ii), direct
6151	the Division of Facilities Construction and Management to convey, lease, or dispose of the
6152	real property, water rights, or water shares associated with the developmental center
6153	according to the board's determination.
6154	
6155	[62A-5-207.] <u>26B-5-508.</u> Superintendent Qualifications.
6156	The superintendent of the developmental center, appointed in accordance with
6157	Subsection 62A-5-104(4), shall have a bachelor's degree from an accredited university or
6158	college, be experienced in administration, and be knowledgeable in developmental
6159	disabilities and intellectual disability.
6160	
6161	[62A-5-208.] <u>26B-5-509.</u> Powers and duties of superintendent.
6162	The chief administrative officer of the developmental center is the superintendent, and
6163	has the following powers and duties:
6164	(1) to manage the developmental center and administer the division's rules governing
6165	the developmental center;
6166	(2) to hire, control, and remove all employees, and to fix their compensation
6167	according to state law; and
6168	(3) with the approval of the division, to make any expenditures necessary in the
6169	performance of his duties.
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6171	[62A-5-211.] <u>26B-5-510.</u> Dental services reporting.
6172	The superintendent of the developmental center shall provide to the Health and
6173	Human Services Interim Committee an annual report that contains:

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(1) a statewide assessment of resources that provide dental services for individuals

6175	with intellectual disabilities;
6176	(2) an accounting of the funds appropriated to provide specialized dental treatment
6177	and evaluation under Subsection 62A-5-201(2)(b)(iii), including the number of individuals
6178	served and the services provided; and
6179	(3) the progress toward the establishment of a financially independent dental clinic
6180	that:
6181	(a) has a full-time dentist who has specialized training to treat an individual with an
6182	intellectual disability; and
6183	(b) has the facility, equipment, and staff necessary to legally and safely perform
6184	dental procedures and examinations and to administer general anesthesia.
6185	
6186	Part 6. Admission to an Intermediate Care Facility for People with an Intellectual
6187	Disability.
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6189	26B-6-601. Definitions.
6190	The definitions in Section 26B-6-401 apply to this part.
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6192	[62A-5-302.] <u>26B-5-602.</u> Division responsibility.
6193	The division is responsible:
6194	(1) for the supervision, care, and treatment of persons with an intellectual disability in
6195	this state who are committed to the division's jurisdiction under the provisions of this part;
6196	and
6197	(2) to evaluate and determine the most appropriate, least restrictive setting for an
6198	individual with an intellectual disability.
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6200	[62A-5-305.] 26B-6-603. Residency requirements Transportation of person to
6201	another state.
6202	(1) A person with an intellectual disability who has a parent or guardian residing in this
6203	state may be admitted to an intermediate care facility for people with an intellectual disability
6204	in accordance with the provisions of this part.
6205	(2) If a person with an intellectual disability enters Utah from another state, the

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division may have that person transported to the home of a relative or friend located outside

of this state, or to an appropriate facility in the state where the person with the intellectual disability is domiciled.

(3) This section does not prevent a person with an intellectual disability who is temporarily located in this state from being temporarily admitted or committed to an intermediate care facility for people with an intellectual disability in this state.

[62A-5-308.] 26B-6-604. Commitment -- Individual who is under 18 years old.

- (1) The director of the division, or the director's designee, may commit an individual under 18 years old who has an intellectual disability or symptoms of an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:
 - (a) an emergency commitment in accordance with Section 62A-5-311; or
 - (b) involuntary commitment in accordance with Section 62A-5-312.
- (2) A proceeding for involuntary commitment under Subsection (1)(a) may be commenced by filing a written petition with the juvenile court under Section 62A-5-312.
- (3) (a) A juvenile court has jurisdiction over the proceeding under Subsection (2) as described in Subsection 78A-6-103(2)(f).
- (b) A juvenile court shall proceed with the written petition in the same manner and with the same authority as the district court.
- (4) If an individual who is under 18 years old is committed to the custody of the Utah State Developmental Center by the juvenile court, the director or the director's designee shall give the juvenile court written notice of the intention to release the individual not fewer than five days before the day on which the individual is released.

[62A-5-309.] <u>26B-6-605.</u> Commitment -- Individual who is 18 years old or older.

- (1) The director, or the director's designee may commit to the division an individual 18 years old or older who has an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:
 - (a) involuntary commitment in accordance with Section 62A-5-312; or
 - (b) temporary emergency commitment in accordance with Section 62A-5-311.
- (2) If an individual who is 18 years old or older is committed to the custody of the Utah State Developmental Center by the juvenile court, the director or the director's designee shall give the juvenile court written notice of the intention to release the individual not fewer than

6239	five days before the day on which the individual is released.
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6241	[62A-5-310.] <u>26B-6-606.</u> Involuntary commitment.
6242	An individual may not be involuntarily committed to an intermediate care facility for
6243	people with an intellectual disability except in accordance with Sections 62A-5-311 and
6244	62A-5-312.
6245	
6246	[62A-5-311.] 26B-6-607. Temporary emergency commitment Observation and
6247	evaluation.
6248	(1) The director of the division or his designee may temporarily commit an individual
6249	to the division and therefore, as a matter of course, to an intermediate care facility for people
6250	with an intellectual disability for observation and evaluation upon:
6251	(a) written application by a responsible person who has reason to know that the
6252	individual is in need of commitment, stating:
6253	(i) a belief that the individual has an intellectual disability and is likely to cause serious
6254	injury to self or others if not immediately committed;
6255	(ii) personal knowledge of the individual's condition; and
6256	(iii) the circumstances supporting that belief; or
6257	(b) certification by a licensed physician or designated intellectual disability
6258	professional stating that the physician or designated intellectual disability professional:
6259	(i) has examined the individual within a three-day period immediately preceding the
6260	certification; and
6261	(ii) is of the opinion that the individual has an intellectual disability, and that because
6262	of the individual's intellectual disability is likely to injure self or others if not immediately
6263	committed.
6264	(2) If the individual in need of commitment is not placed in the custody of the director
6265	or the director's designee by the person submitting the application, the director's or the
6266	director's designee may certify, either in writing or orally that the individual is in need of
6267	immediate commitment to prevent injury to self or others.

required by Subsections (1)(b) and (2), a peace officer may take the individual named in the

application and certificates into custody, and may transport the individual to a designated

(3) Upon receipt of the application required by Subsection (1)(a) and the certifications

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intermediate care facility for people with an intellectual disability.

- (4) (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.
 - (b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312.
 - (5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

[62A-5-312.] <u>26B-6-608.</u> Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.

- (1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:
- (a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or
 - (b) a written statement by the petitioner that:
- (i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the

division for treatment; 6303

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- 6304 (ii) is under oath; and
 - (iii) sets forth the facts on which the statement is based.
- 6306 (2) Before issuing a detention order, the court may require the petitioner to consult 6307 with personnel at the division or at an intermediate care facility for people with an intellectual 6308 disability and may direct a designated intellectual disability professional to interview the 6309 petitioner and the individual to be committed, to determine the existing facts, and to report 6310 them to the court.
 - (3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:
 - (a) poses an immediate danger of physical injury to self or others;
 - (b) requires involuntary commitment pending examination and hearing;
 - (c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or
 - (d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.
 - (4) (a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:
 - (i) whether the director or his designee believes that the individual has an intellectual disability; and
 - (ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.
 - (b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.

- (5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.
- 6340 (6) (a) Immediately after commencement of proceedings for involuntary commitment, 6341 the court shall give notice of commencement of the proceedings to:
 - (i) the individual to be committed;
- 6343 (ii) the applicant;

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- (iii) any legal guardian of the individual;
- 6345 (iv) adult members of the individual's immediate family;
- 6346 (v) legal counsel of the individual to be committed, if any;
- 6347 (vi) the division; and
- 6348 (vii) any other person to whom the individual requests, or the court designates, notice 6349 to be given.
- (b) If an individual cannot or refuses to disclose the identity of persons to be notified,the extent of notice shall be determined by the court.
- 6352 (7) That notice shall:
 - (a) set forth the allegations of the petition and all supporting facts;
- (b) be accompanied by a copy of any detention order issued under Subsection (3); and
- 6356 (c) state that a hearing will be held within the time provided by law, and give the time 6357 and place for that hearing.
 - (8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:
 - (a) there are no appropriate facilities for persons with an intellectual disability within the judicial district; and
 - (b) the transfer will not be adverse to the interests of the individual.
 - (9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by

counsel to be one of the examining designated intellectual disability professionals. The examinations shall be conducted:

(i) separately;

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- 6370 (ii) at the home of the individual to be committed, a hospital, an intermediate care 6371 facility for people with an intellectual disability, or any other suitable place not likely to have a 6372 harmful effect on the individual; and
- 6373 (iii) within a reasonable period of time after appointment of the examiners by the 6374 court.
 - (b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:
 - (i) the individual does not have an intellectual disability; or
 - (ii) treatment programs are available and will be used by the individual without court proceedings.
 - (10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.
 - (b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.
 - (11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.
 - (12) (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.
 - (b) The court may, in its discretion:
 - (i) receive the testimony of any other person;
 - (ii) allow a waiver of the right to appear only for good cause shown;

- 6399 (iii) exclude from the hearing all persons not necessary to conduct the proceedings; 6400 and
- 6401 (iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.
 - (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.
 - (13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:
 - (a) the individual to be committed has an intellectual disability;
 - (b) because of the individual's intellectual disability one or more of the following conditions exist:
 - (i) the individual poses an immediate danger of physical injury to self or others;
 - (ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or
 - (iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;
 - (c) there is no appropriate, less restrictive alternative reasonably available; and
 - (d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.
 - (14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.
 - (15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the

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initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.

- (b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.
- (16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.
- (17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.
- (b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.
 - (c) The staff of the division shall immediately:
- (i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court:
- (ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and
 - (iii) immediately inform the court of any discharge.
- (d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.
- (e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.
 - (18) When a resident is discharged under this subsection, the division shall provide

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any further support services available and required to meet the resident's needs.

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[62A-5-313.] 26B-6-609. Transfer -- Procedures.

- (1) The director of the division, or the director's designee, may place an involuntarily committed resident in appropriate care or treatment outside the intermediate care facility for people with an intellectual disability. During that placement, the order of commitment shall remain in effect, until the resident is discharged or the order is terminated.
 - (2) If the resident, or the resident's parent or guardian, objects to a proposed placement under this section, the resident may appeal the decision to the executive director or the executive director's designee. Those appeals shall be conducted in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an objection is made, the proposed placement may not take effect until the committee holds that hearing and the executive director makes a final decision on the placement.

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[62A-5-315.] <u>26B-6-610.</u> Petition for reexamination.

- (1) A resident committed under Section 62A-5-312, or his parent, spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district court of the county in which the resident is domiciled or detained.
- (2) Upon receipt of that petition, the court shall conduct proceedings under Section 62A-5-312.

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[62A-5-316.] <u>26B-6-611.</u> Temporary detention.

- (1) Pending removal to an intermediate care facility for people with an intellectual disability, an individual taken into custody or ordered to be committed under this part may be detained in the individual's home, or in some other suitable facility.
- (2) The individual shall not, however, be detained in a nonmedical facility used for detention of individuals charged with or convicted of penal offenses, except in a situation of extreme emergency.
- (3) The division shall take reasonable measures, as may be necessary, to assure proper care of an individual temporarily detained under this part.

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[62A-5-317.] <u>26B-6-612.</u> Authority to transfer resident.

- (1) The administrator of an intermediate care facility for people with an intellectual disability, or the administrator's designee, may transfer or authorize the transfer of a resident to another intermediate care facility for people with an intellectual disability if, before the transfer, the administrator conducts a careful evaluation of the resident and the resident's treatment needs, and determines that a transfer would be in the best interest of that resident. If a resident is transferred, the administrator shall give immediate notice of the transfer to the resident's spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's nearest known relative.
- (2) If a resident, or the resident's parent or guardian, objects to a proposed transfer under this section, the administrator shall conduct a hearing on the objection before a committee composed of persons selected by the administrator. That committee shall hear all evidence and make a recommendation to the administrator concerning the proposed transfer. The transfer may not take effect until the committee holds that hearing and the administrator renders a final decision on the proposed transfer.

[62A-5-318.] <u>26B-6-613.</u> Involuntary treatment with medication -- Committee -- Findings.

- (1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:
- (a) a licensed physician experienced in treating persons with an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;
- (b) a psychologist who is a designated intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and
- (c) another designated intellectual disability professional of the facility for persons with an intellectual disability, or a designee.
- (2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary

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6527	treatment with medication if it determines that:
6528	(a) the proposed treatment is in the medical best interest of the resident, taking into
6529	account the possible side effects as well as the potential benefits of the medication; and
6530	(b) the proposed treatment is in accordance with prevailing standards of accepted
6531	medical practice.
6532	(3) In making the determination described in Subsection (2), the committee shall
6533	consider the resident's general history and present condition, the specific need for
6534	medication and its possible side effects, and any previous reaction to the same or
6535	comparable medication.
6536	(4) Any authorization of involuntary treatment under this section shall be periodically
6537	reviewed in accordance with rules promulgated by the division.
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6540	Part 7. Disability Ombudsman.
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6542	[62A-5-501.] <u>26B-6-701.</u> Definitions.
6543	[As] In addition to the definitions in Section 26B-6-401, as used in this part:
6544	(1) "Complainant" means a person who initiates a complaint.
6545	(2) "Complaint" means a complaint initiated with the ombudsman identifying a person
6546	who has violated the rights and privileges of an individual with a disability.
6547	(3) "Ombudsman" means the ombudsman appointed in Section 62A-5-502.
6548	(4) "Rights and privileges of an individual with a disability" means the rights and
6549	privileges of an individual with a disability described in Subsections 62A-5b-103(1) through
6550	(3).
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6552	[62A-5-502.] <u>26B-6-702.</u> Disability ombudsman Purpose Appointment
6553	Qualifications Staff.
6554	(1) There is created within the division the position of disability ombudsman for the
6555	purpose of promoting, advocating, and ensuring the rights and privileges of an individual with
6556	a disability are upheld.

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(2) The director shall appoint an ombudsman who has:

(a) recognized executive and administrative capacity; and

6559	(b) experience in laws and policies regarding individuals with a disability.
6560	(3) The ombudsman may hire staff as necessary to carry out the duties of the
6561	ombudsman under this part.
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6563	[62A-5-503.] <u>26B-6-703.</u> Powers and duties of ombudsman.
6564	The ombudsman shall:
6565	(1) develop and maintain expertise in laws and policies governing the rights and
6566	privileges of an individual with a disability;
6567	(2) provide training and information to private citizens, civic groups, governmental
6568	entities, and other interested parties across the state regarding:
6569	(a) the role and duties of the ombudsman;
6570	(b) the rights and privileges of an individual with a disability; and
6571	(c) services available in the state to an individual with a disability;
6572	(3) develop a website to provide the information described in Subsection (2) in a form
6573	that is easily accessible;
6574	(4) receive, process, and investigate complaints in accordance with this part;
6575	(5) review periodically the procedures of state entities that serve individuals with a
6576	disability;
6577	(6) cooperate and coordinate with governmental entities and other organizations in
6578	the community in exercising the duties under this section, including the long-term care
6579	ombudsman program, created in Section 62A-3-203, and the child protection ombudsman,
6580	appointed under Section 62A-4a-208, when there is overlap between the responsibilities of
6581	the ombudsman and the long-term care ombudsman program or the child protection
6582	ombudsman;
6583	(7) as appropriate, make recommendations to the division regarding rules to be made
6584	in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that the
6585	ombudsman considers necessary to carry out the ombudsman's duties under this part;
6586	(8) submit annually, by July 1, to the Health and Human Services Interim Committee,
6587	a report describing:
6588	(a) the work of the ombudsman; and

ombudsman in performing the duties under this section; and

(b) any recommendations for statutory changes to improve the effectiveness of the

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6591	(9) perform other duties required by law.
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6593	[62A-5-504.] <u>26B-6-704.</u> Investigation of complaints Procedures
6594	Rulemaking.
6595	(1) Except as provided in Subsection (3), the ombudsman shall, upon receipt of a
6596	complaint, investigate the complaint.
6597	(2) An ombudsman's investigation of a complaint may include:
6598	(a) a referral to a governmental entity or other services;
6599	(b) the collection of facts, information, or documentation;
6600	(c) holding an investigatory hearing; or
6601	(d) an inspection of the premises of the person named in the complaint.
6602	(3) (a) The ombudsman may decline to investigate a complaint.
6603	(b) If the ombudsman declines to investigate a complaint, the ombudsman shall notify
6604	the complainant and the division of the declination.
6605	(4) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
6606	Administrative Rulemaking Act, that govern the ombudsman's process for:
6607	(a) receiving and processing complaints; and
6608	(b) conducting an investigation in accordance with this section.
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6610	[62A-5-505.] <u>26B-6-705.</u> Confidentiality of materials relating to complaints or
6611	investigations Rulemaking.
6612	(1) The division shall establish procedures by rule made in accordance with Title 63G,
6613	Chapter 3, Utah Administrative Rulemaking Act, to ensure that a record maintained by the
6614	ombudsman is disclosed only at the discretion of and under the authority of the ombudsman.
6615	(2) The identity of a complainant or a party named in the complaint may not be
6616	disclosed by the ombudsman unless:
6617	(a) the complainant or a legal representative of the complainant consents to the
6618	disclosure;
6619	(b) disclosure is ordered by a court of competent jurisdiction; or
6620	(c) the disclosure is approved by the ombudsman and is made, as part of an
6621	investigation involving the complainant, to an agency or entity in the community that:
6622	(i) has statutory responsibility for the complainant, over the action alleged in the

6623	complaint, or another party named in the complaint;
6624	(ii) is able to assist the ombudsman to achieve resolution of the complaint; or
6625	(iii) is able to provide expertise that would benefit the complainant.
6626	(3) Neither the ombudsman nor the ombudsman's designee may be required to testify
6627	in court with respect to confidential matters, except as the court finds necessary to enforce
6628	this part.
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6631	Part 8. Rights and Privileges of Minors and Individuals with a Disability.
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6633	[62A-5b-102.] <u>26B-6-801.</u> Definitions.
6634	As used in this [chapter] <u>part</u> :
6635	(1) "Disability" has the same meaning as defined in 42 U.S.C. 12102 of the
6636	Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R.
6637	36.104 of the Code of Federal Regulations, as may be amended in the future.
6638	(2) "Informed consent" means consent that is voluntary and based on an
6639	understanding by the person to be sterilized of the nature and consequences of sterilization,
6640	the reasonably foreseeable risks and benefits of sterilization, and the available alternative
6641	methods of contraception.
6642	(3) "Institutionalized" means residing in the Utah State Developmental Center, the
6643	Utah State Hospital, a residential facility for persons with a disability as defined in Sections
6644	10-9a-103 and 17-27a-103, a group home for persons with a disability, a nursing home, or a
6645	foster care home or facility.
6646	[(2)] <u>(3)</u> (a) "Service animal" includes any dog that:
6647	(i) is trained, or is in training, to do work or perform tasks for the benefit of an
6648	individual with a disability, including a physical, sensory, psychiatric, intellectual, or other
6649	mental disability; and
6650	(ii) performs work or tasks, or is in training to perform work or tasks, that are directly
6651	related to the individual's disability, including:
6652	(A) assisting an individual who is blind or has low vision with navigation or other tasks
6653	(B) alerting an individual who is deaf or hard of hearing to the presence of people or
6654	sounds;

6655	(C) providing non-violent protection or rescue work;
6656	(D) pulling a wheelchair;
6657	(E) assisting an individual during a seizure;
6658	(F) alerting an individual to the presence of an allergen;
6659	(G) retrieving an item for the individual;
6660	(H) providing physical support and assistance with balance and stability; or
6661	(I) helping an individual with a psychiatric or neurological disability by preventing or
6662	interrupting impulsive or destructive behaviors.
6663	(b) "Service animal" does not include:
6664	(i) an animal other than a dog, whether wild or domestic, trained or untrained; or
6665	(ii) an animal used solely to provide:
6666	(A) a crime deterrent;
6667	(B) emotional support;
6668	(C) well-being;
6669	(D) comfort; or
6670	(E) companionship.
6671	(4) "Sterilization" means any medical procedure, treatment, or operation rendering an
6672	individual permanently incapable of procreation.
6673	[(3)] <u>(5)</u> "Support animal" means an animal, other than a service animal, that
6674	qualifies as a reasonable accommodation under federal law for an individual with a disability.
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6676	[62A-5b-103.] <u>26B-6-802.</u> Rights and privileges of an individual with a
6677	disability.
6678	(1) An individual with a disability has the same rights and privileges in the use of
6679	highways, streets, sidewalks, walkways, public buildings, public facilities, and other public
6680	areas as an individual who is not an individual with a disability.
6681	(2) An individual with a disability has equal rights to accommodations, advantages,
6682	and facilities offered by common carriers, including air carriers, railroad carriers, motor
6683	buses, motor vehicles, water carriers, and all other modes of public conveyance in this state.
6684	(3) An individual with a disability has equal rights to accommodations, advantages,
6685	and facilities offered by hotels, motels, lodges, and all other places of public accommodation
6686	in this state, and to places of amusement or resort to which the public is invited.

- (4) (a) An individual with a disability has equal rights and access to public and private 6687 6688 housing accommodations offered for rent, lease, or other compensation in this state.
 - (b) This chapter does not require a person renting, leasing, or selling private housing or real property to modify the housing or property in order to accommodate an individual with a disability or to provide a higher degree of care for that individual than for someone who is not an individual with a disability.
 - (c) A person renting, leasing, or selling private housing or real property to an individual with a disability shall comply with the provisions of Section 62A-5b-104.

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- [62A-5b-104.] 26B-6-803. Right to be accompanied by service animal or support animal -- Security deposits -- Discrimination -- Liability.
- (1) (a) An individual with a disability has the right to be accompanied by a service 6698 6699 animal, unless the service animal is a danger or nuisance to others as interpreted under the 6700 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102:
 - (i) in any of the places specified in Section 62A-5b-103; and
 - (ii) without additional charge for the service animal.
 - (b) An owner or lessor of private housing accommodations:
 - (i) may not, in any manner, discriminate against an individual with a disability on the basis of the individual's possession of a service animal or a support animal, including by charging an extra fee or deposit for a service animal or a support animal; and
 - (ii) may recover a reasonable cost to repair damage caused by a service animal or a support animal.
 - (2) An individual who is not an individual with a disability has the right to be accompanied by an animal that is in training to become a service animal or a police service canine, as defined in Section 53-16-102:
 - (a) in any of the places specified in Section 62A-5b-103; and
 - (b) without additional charge for the animal.
 - (3) An individual described in Subsection (1) or (2) is liable for any loss or damage the individual's accompanying service animal, support animal, or animal described in Subsection (2) causes or inflicts to the premises of a place specified in Section 62A-5b-103.
- 6717 (4) Nothing in this section prohibits the exclusion, as permitted under federal law, of a 6718 service animal or a support animal from a place described in Section 62A-5b-103.

6719	[62A-5b-105.] <u>26B-6-804.</u>	Policy of state to employ individuals with a disability.
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It is the policy of this state that an individual with a disability is employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as an individual who is not an individual with a disability, unless it is shown that the particular disability prevents the performance of the work involved.

[62A-5b-106.] <u>26B-6-805.</u> Interference with rights provided in this chapter -- Misrepresentation of rights under this chapter.

- (1) Any individual, or agent of any individual, who denies or interferes with the rights provided in this chapter is guilty of a class C misdemeanor.
 - (2) An individual is guilty of a class C misdemeanor if:
- (a) the individual intentionally and knowingly falsely represents to another person that an animal is a service animal or a support animal;
- (b) the individual knowingly and intentionally misrepresents a material fact to a health care provider for the purpose of obtaining documentation from the health care provider necessary to designate an animal as a service animal or a support animal; or
- (c) the individual, except for an individual with a disability, uses an animal to gain treatment or benefits only provided for an individual with a disability.
- (3) This section does not affect the enforceability of any criminal law, including Subsection 76-6-501(2).
- (4) An agent of a protection and advocacy agency, acting in the agent's professional capacity and in compliance with 29 U.S.C. Sec. 794e et seq., 42 U.S.C. Sec. 15041 et seq., and 42 U.S.C. Sec. 1801 et seq., is not criminally liable under Subsection (2).

[62A-6-102.] 26B-6-806. Sterilization of persons 18 years of age or older.

- (1) It is lawful for a physician to sterilize a person who is 18 years of age or older and who has the capacity to give informed consent.
- (2) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is institutionalized, unless:
- (a) the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent and that no undue influence or coercion to

consent has been placed on that person by nature of the fact that he is institutionalized; or

- (b) the person is not capable of giving informed consent, a petition has been filed in accordance with Section 62A-6-107, and an order authorizing the sterilization has been entered by a court of competent jurisdiction.
- (3) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is not capable of giving informed consent unless a petition has been filed in accordance with Section 62A-6-107 and an order authorizing sterilization has been entered by a court of competent jurisdiction.

[62A-6-103.] <u>26B-6-807.</u> Sterilization of persons under 18 years of age.

It is unlawful for a physician to sterilize a person who is under 18 years of age unless:

- (1) the person is married or otherwise emancipated and the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent. If that person is institutionalized, the physician shall also ensure that no undue influence or coercion to consent has been placed on the person by nature of the fact that he is institutionalized; or
- (2) a petition has been filed in accordance with Section 62A-6-107, and an order authorizing sterilization has been entered by a court of competent jurisdiction.

[62A-6-104.] 26B-6-808. Emergency -- Medical necessity.

- (1) If an emergency situation exists that prevents compliance with Section 62A-6-102 or 62A-6-103 because of medical necessity, if delay in performing the sterilization could result in serious physical injury or death to the person, the attending physician shall certify, in writing, the specific medical reasons that necessitated suspension of those requirements.
- (2) That certified statement shall become a permanent part of the sterilized person's medical record.

[62A-6-105.] 26B-6-809. Persons who may give informed consent.

For purposes of this [chapter] part, the following persons may give informed consent to sterilization:

6781 (1) a person who is the subject of sterilization, if [he] the person is capable of giving informed consent; and

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6783	(2) a person appointed by the court to give informed consent on behalf of a subject of
6784	sterilization who is incapable of giving informed consent.
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6786	[62A-6-106.] <u>26B-6-810.</u> Declaration of capacity to give informed consent
6787	Hearing.
6788	(1) A person who desires sterilization but whose capacity to give informed consent is
6789	questioned by any interested party may file a petition for declaration of capacity to give
6790	informed consent.
6791	(2) If, after hearing all the relevant evidence, the court finds by a preponderance of
6792	the evidence that the person is capable of giving informed consent, the court shall enter an
6793	order declaring that the person has the capacity to give informed consent.
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6795	[62A-6-107.] <u>26B-6-811.</u> Petition for order authorizing sterilization.
6796	(1) A petition for an order authorizing sterilization may be filed by a person who
6797	desires sterilization, or by [his] the person's parent, spouse, guardian, custodian, or other
6798	interested party.
6799	(2) The court shall adjudicate the petition for sterilization in accordance with Section
6800	62A-6-108.
6801	
6802	[62A-6-108.] <u>26B-6-812.</u> Factors to be considered by court Evaluations
6803	Interview Findings of fact.
6804	(1) If the court finds that the subject of sterilization is not capable of giving informed
6805	consent, the court shall consider, but not by way of limitation, the following factors concerning
6806	that person:
6807	(a) the nature and degree of his mental impairment, and the likelihood that the
6808	condition is permanent;
6809	(b) the level of his understanding regarding the concepts of reproduction and
6810	contraception, and whether his ability to understand those concepts is likely to improve;
6811	(c) his capability for procreation or reproduction[lt is] _, with a rebuttable
6812	presumption that the ability to procreate and reproduce exists in a person of normal physical

development;

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(d) the potentially injurious physical and psychological effects from sterilization,

6815	pregnancy, childbirth, and parenthood;
6816	(e) the alternative methods of birth control presently available including, but not
6817	limited to, drugs, intrauterine devices, education and training, and the feasibility of one or

more of those methods as an alternative to sterilization: 6818

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- 6819 (f) the likelihood that he will engage in sexual activity or could be sexually abused or 6820 exploited:
 - (g) the method of sterilization that is medically advisable, and least intrusive and destructive of his rights to bodily and psychological integrity:
 - (h) the advisability of postponing sterilization until a later date; and
 - (i) the likelihood that he could adequately care and provide for a child.
 - (2) (a) The court may require that independent medical, psychological, and social evaluations of the subject of sterilization be made prior to ruling on a petition for sterilization.
 - (b) The court may appoint experts to perform those examinations and evaluations and may require the petitioner, to the extent of the petitioner's ability, to bear the costs incurred.
 - (3) (a) The court shall interview the subject of sterilization to determine his understanding of and desire for sterilization.
 - (b) The expressed preference of the person shall be made a part of the record, and shall be considered by the court in rendering its decision.
 - (c) The court is not bound by the expressed preference of the subject of sterilization; however, if the person expresses a preference not to be sterilized, the court shall deny the petition unless the petitioner proves beyond a reasonable doubt that the person will suffer serious physical or psychological injury if the petition is denied.
 - (4) (a) When adjudicating a petition for sterilization the court shall determine, on the basis of all the evidence, what decision regarding sterilization would have been made by the subject of sterilization, if he were capable of giving informed consent to sterilization.
 - (b) The decision regarding sterilization shall be in the best interest of the person to be sterilized.
- 6843 (5) If the court grants a petition for sterilization, it shall make appropriate findings of 6844 fact in support of its order.

[62A-6-109.] 26B-6-813. Advanced hearing. 6846

On motion by the person seeking sterilization or by any other party to the proceeding
the court may advance hearing on the petition.

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- [62A-6-110.] <u>26B-6-814.</u> Notice of hearing -- Service.
- 6851 (1) A copy of the petition and notice of the hearing shall be served personally on the person to be sterilized not less than 20 days before the hearing date.
 - (2) The notice shall state the date, time, and place of the hearing, and shall specifically state that the hearing is to adjudicate either a petition for declaration of capacity to give informed consent to sterilization or a petition for sterilization.
 - (3) Notice shall be served on that person's parents, spouse, guardian, or custodian and on his attorney by the clerk of the court, by certified mail, not less than 10 days before the hearing date.

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- [62A-6-111.] <u>26B-6-815.</u> Guardian ad litem -- Procedural rights.
- (1) The court shall appoint an attorney to act as guardian ad litem to defend the rights and interests of the person to be sterilized.
 - (2) The person to be sterilized is entitled to appear and testify at the hearing, to examine and cross examine witnesses, and to compel the attendance of witnesses.
 - (3) (a) The person who is the subject of a sterilization proceeding may, on motion to the court and for good cause shown, waive the right to be present at the hearing.
 - (b) If the court grants that motion, the person shall be represented by a guardian ad litem at the hearing.

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- [62A-6-112.] <u>26B-6-816.</u> Jury -- Rules of evidence -- Transcript -- Burden of proof.
- (1) The petitioner is entitled to request a jury to hear the petition.
 - (2) The rules of evidence apply in any hearing on a petition for sterilization.
- 6874 (3) A transcript shall be made of the hearing and shall be made a permanent part of the record.
- [(2)] (4) The burden of producing evidence and the burden of proof shall be upon the petitioner to prove by clear and convincing evidence that the petition for or order authorizing sterilization should be granted.

6879	[62A-6-113.] <u>26B-6-817.</u> Appeal to Supreme Court Stay.
6880	(1) Any party to a proceeding under this chapter may file a notice of appeal from any
6881	adverse decision with the Supreme Court in accordance with Rule 73, Utah Rules of Civil
6882	Procedure.
6883	(2) The pendency of an appeal in the Supreme Court shall stay the proceedings until
6884	the appeal is finally determined.
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6886	[62A-6-114.] 26B-6-818. Treatment for therapeutic reasons unaffected.
6887	Nothing in this chapter shall be construed to prevent the medical or surgical treatment,
6888	for sound therapeutic reasons, of any person by a physician or surgeon licensed by this
6889	state, which treatment may incidentally involve destruction of reproductive functions.
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6891	[62A-6-115.] <u>26B-6-819.</u> Immunity.
6892	(1) A physician, assistant, or any other person acting pursuant to an order
6893	authorizing sterilization, as provided in this [chapter] part, is not civilly or criminally liable for
6894	participation in or assistance to sterilization.
6895	(2) This section does not apply to negligent acts committed in the performance of
6896	sterilization.
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6898	[62A-6-116.] <u>26B-6-820.</u> Unauthorized sterilization Criminal penalty.
6899	Except as authorized by this [chapter] part, any person who intentionally performs,
6900	encourages, assists in, or otherwise promotes the performance of a sterilization procedure
6901	for the purpose of destroying the power to procreate the human species, with knowledge that
6902	the provisions of this [chapter] part have not been met, is guilty of a third degree felony.
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6904	Chapter 7. Public Health and Prevention.
6905	
6906	Part 1. Health Promotion and Risk Reduction.
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6908	26B-7-101. [Public health, prevention, and epidemiology Reserved] Definitions
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6910	[Reserved] As used in this part:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

6911	(1) "Down syndrome" means a genetic condition associated with an extra
6912	chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.
6913	(2) "Maternal and child health services" means:
6914	(a) the provision of educational, preventative, diagnostic, and treatment services,
6915	including medical care, hospitalization, and other institutional care and aftercare, appliances,
6916	and facilitating services directed toward reducing infant mortality and improving the health of
6917	mothers and children provided, however, that nothing in this Subsection (2) shall be
6918	construed to allow any agency of the state to interfere with the rights of the parent of an
6919	unmarried minor in decisions about the providing of health information or services;
6920	(b) the development, strengthening, and improvement of standards and techniques
6921	relating to the services and care;
6922	(c) the training of personnel engaged in the provision, development, strengthening, or
6923	improvement of the services and care; and
6924	(d) necessary administrative services connected with Subsections (2)(a), (b), and (c).
6925	(3) "Minor" means a person under the age of 18.
6926	(4) "Services to children with disabilities" means:
6927	(a) the early location of children with a disability, provided that any program of
6928	prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an
6929	unborn child will not be used for screening, but rather will be utilized only when there are
6930	medical or genetic indications that warrant diagnosis;
6931	(b) the provision for children described in Subsection (4)(a), of preventive, diagnosis,
6932	and treatment services, including medical care, hospitalization, and other institutional care
6933	and aftercare, appliances, and facilitating services directed toward the diagnosis of the
6934	condition of those children or toward the restoration of the children to maximum physical and
6935	mental health;
6936	(c) the development, strengthening, and improvement of standards and techniques
6937	relating to services and care described in this Subsection (4);
6938	(d) the training of personnel engaged in the provision, development, strengthening, or
6939	improvement of services and care described in this Subsection (4); and
6940	(e) necessary administrative services connected with Subsections (4)(a), (b), and (c).
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6942	[26-10-3.] <u>26B-7-102.</u> Director of family health services programs.

The executive director may appoint a director of family health services programs who shall be a board certified pediatrician or obstetrician with at least two years experience in public health programs.

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[26-10-4.] 26B-7-103. State plan for maternal and child health services.

The department shall prepare and submit a state plan for maternal and child health services as required by Title II of the Public Health Services Act. The plan shall be the official state plan for the state and shall be used as the basis for administration of Title V programs within the state.

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- [26-10-5.5.] 26B-7-104. Child literacy -- Distribution of information kits.
- (1) The Legislature recognizes that effective child literacy programs can have a 6954 6955 dramatic long-term impact on each child's ability to:
 - (a) succeed in school;
 - (b) successfully compete in a global society; and
 - (c) become a productive, responsible citizen.
 - (2) (a) To help further this end, the department may make available to parents of new-born infants, as a resource, an information kit regarding child development, the development of emerging literacy skills, and activities which promote and enhance emerging literacy skills, including reading aloud to the child on a regular basis.
 - (b) The department shall seek private funding to help support this program.
 - (3) (a) The department may seek assistance from the State Board of Education and local hospitals in making the information kit available to parents on a voluntary basis.
 - (b) The department may also seek assistance from private entities in making the kits available to parents.

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- [26-10-10.] 26B-7-105. Cytomegalovirus (CMV) public education and testing.
- (1) As used in this section "CMV" means cytomegalovirus.
- (2) The department shall establish and conduct a public education program to inform 6972 pregnant women and women who may become pregnant regarding:
 - (a) the incidence of CMV;
- 6974 (b) the transmission of CMV to pregnant women and women who may become

6975	pregnant;
6976	(c) birth defects caused by congenital CMV;
6977	(d) methods of diagnosing congenital CMV; and
6978	(e) available preventative measures.
6979	(3) The department shall provide the information described in Subsection (2) to:
6980	(a) child care programs licensed under Title 26, Chapter 39, Utah Child Care
6981	Licensing Act, and their employees;
6982	(b) a person described in Subsection 26-39-403(1)(a)(iii) and Subsections
6983	26-39-403(2)(a), (b), (c), (e), and (f);
6984	(c) a person serving as a school nurse under Section 53G-9-204;
6985	(d) a person offering health education in a school district;
6986	(e) health care providers offering care to pregnant women and infants; and
6987	(f) religious, ecclesiastical, or denominational organizations offering children's
6988	programs as a part of worship services.
6989	(4) If a newborn infant fails the newborn hearing screening test(s) under Subsection
6990	26-10-6(1), a medical practitioner shall:
6991	(a) test the newborn infant for CMV before the newborn is 21 days of age, unless a
6992	parent of the newborn infant objects; and
6993	(b) provide to the parents of the newborn infant information regarding:
6994	(i) birth defects caused by congenital CMV; and
6995	(ii) available methods of treatment.
6996	(5) The department shall provide to the family and the medical practitioner, if known,
6997	information regarding the testing requirements under Subsection (4) when providing results
6998	indicating that an infant has failed the newborn hearing screening test(s) under Subsection
6999	26-10-6(1).
7000	(6) The department may make rules in accordance with Title 63G, Chapter 3, Utah
7001	Administrative Rulemaking Act, as necessary to administer the provisions of this section.
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7003	[26-10-14.] <u>26B-7-106.</u> Down syndrome diagnosis Information and support.
7004	(1) The department shall provide contact information for state and national Down
7005	syndrome organizations that are nonprofit and that provide information and support services
7006	for parents, including first-call programs and information hotlines specific to Down syndrome,

7007 resource centers or clearinghouses, and other education and support programs for Down 7008 syndrome.

(2) The department shall:

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- 7010 (a) post the information described in Subsection (1) on the department's website; and
- 7011 (b) create an informational support sheet with the information described in Subsection 7012 (1) and the web address described in Subsection (2)(a).
- 7013 (3) A Down syndrome organization may request that the department include the 7014 organization's informational material and contact information on the website. The department 7015 may add the information to the website, if the information meets the description under 7016 Subsection (1).
 - (4) Upon request, the department shall provide a health care facility or health care provider a copy of the informational support sheet described in Subsection (2)(b) to give to a pregnant woman after the result of a prenatal screening or diagnostic test indicates the unborn child has or may have Down syndrome.

[26-10-15.] 26B-7-107. Lead exposure public education and testing.

- 7023 (1) The department shall establish a child blood lead epidemiology and surveillance 7024 program to:
 - (a) encourage pediatric health care providers to include a lead test in accordance with the department's recommendations under Subsection (2); and
 - (b) conduct a public education program to inform parents of children who are two years old or younger regarding:
 - (i) the effects of lead exposure in children;
 - (ii) the availability of free screening and testing for lead exposure; and
 - (iii) other available preventative measures.
- 7032 (2) The department may recommend consideration of screening and testing during 7033 the first year or second year well child clinical visit.
 - (3) (a) The department shall provide the information described in Subsection (1) to organizations that regularly provide care or services for children who are 5 years old or younger.
- 7037 (b) The department may work with the following organizations to share the information described in Subsection (1): 7038

- 7039 (i) a child care program licensed under Title 26, Chapter 39, Utah Child Care 7040 Licensing Act, and the employees of the child care program;
- 7041 (ii) a health care facility licensed under Title 26, Chapter 21, Health Care Facility 7042 Licensing and Inspection Act;
- 7043 (iii) a person providing child care under a program that is described in Subsection 7044 26-39-403(2);
- 7045 (iv) an individual offering health education in a school district, including a school nurse 7046 under Section 53G-9-204;
 - (v) a health care provider offering care to pregnant women and infants;
- 7048 (vi) a religious, ecclesiastical, or denominational organization offering children's programs as a part of worship services;
- 7050 (vii) an organization that advocates for public education, testing, and screening of 7051 children for lead exposure;
 - (viii) a local health department as defined in Section 26A-1-102; and
 - (ix) any other person that the department believes would advance public education regarding the effects of lead exposure on children.
 - (4) The department shall seek grant funding to fund the program created in this section.

[26-1-23.5.] <u>26B-7-108.</u> Rules for sale of drugs, cosmetics, and medical devices.

The department shall establish and enforce rules for the sale or distribution of human drugs, cosmetics, and medical devices. The rules adopted under this section shall be no more stringent than those established by federal law.

[26-1-26.] <u>26B-7-109.</u> Director of community health nursing appointed by executive director.

[There shall be within the department] The executive director shall appoint a director of community health nursing [appointed by the executive director] who shall develop, implement, monitor, and evaluate community health nursing standards and services and participate in the formulation of policies for administration of health services.

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[26-1-36.] 26B-7-110. Duty to establish program to reduce deaths and other harm from prescription opiates used for chronic noncancer pain.

- (1) As used in this section, "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.
- (2) In addition to the duties listed in Section 26-1-30, the department shall develop and implement a two-year program in coordination with the Division of Professional Licensing, the Utah Labor Commission, and the Utah attorney general, to:
- (a) investigate the causes of and risk factors for death and nonfatal complications of prescription opiate use and misuse in Utah for chronic pain by utilizing the Utah Controlled Substance Database created in Section 58-37f-201;
- (b) study the risks, warning signs, and solutions to the risks associated with prescription opiate medications for chronic pain, including risks and prevention of misuse and diversion of those medications;
- (c) provide education to health care providers, patients, insurers, and the general public on the appropriate management of chronic pain, including the effective use of medical treatment and quality care guidelines that are scientifically based and peer reviewed; and
 - (d) educate the public regarding:
- (i) the purpose of the Controlled Substance Database established in Section 58-37f-201; and
- (ii) the requirement that a person's name and prescription information be recorded on the database when the person fills a prescription for a schedule II, III, IV, or V controlled substance.

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[26-1-38.] <u>26B-7-111.</u> Local health emergency assistance program.

- (1) As used in this section:
- 7097 (a) "Local health department" means the same as that term is defined in Section 7098 26A-1-102.
- 7099 (b) "Local health emergency" means an unusual event or series of events causing or resulting in a substantial risk or substantial potential risk to the health of a significant portion of the population within the boundary of a local health department, as determined by the local health department.

- 7103 (c) "Program" means the local health emergency assistance program that the 7104 department is required to establish under this section.
- 7105 (d) "Program fund" means money that the Legislature appropriates to the department 7106 for use in the program and other money otherwise made available for use in the program.
- 7107 (2) The department shall establish, to the extent of funds appropriated by the 7108 Legislature or otherwise made available to the program fund, a local health emergency 7109 assistance program.
 - (3) Under the program, the department shall:

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- 7111 (a) provide a method for a local health department to seek reimbursement from the 7112 program fund for local health department expenses incurred in responding to a local health 7113 emergency;
- 7114 (b) require matching funds from any local health department seeking reimbursement 7115 from the program fund;
 - (c) establish a method for apportioning money in the program fund to multiple local health departments when the total amount of concurrent requests for reimbursement by multiple local health departments exceeds the balance in the program fund; and
 - (d) establish by rule other provisions that the department considers necessary or advisable to implement the program.
 - (4) (a) (i) Subject to Subsection (4)(a)(ii), the department shall use money in the program fund exclusively for purposes of the program.
 - (ii) The department may use money in the program fund to cover its costs of administering the program.
 - (b) Money that the Legislature appropriates to the program fund is nonlapsing in accordance with Section 63J-1-602.1.
- 7127 (c) Any interest earned on money in the program fund shall be deposited to the 7128 General Fund.

7130 [26-1-42.] 26B-7-112. Health care grant requests and funding.

- (1) Any time the United States Department of Health and Human Services accepts grant applications, the department shall apply for a grant under Title X of the Public Health Service Act, 42 U.S.C. Sec. 300 et seq.
- (2) (a) As part of the application described in Subsection (1), the department shall

- 7135 request that the United States Department of Health and Human Services waive the 7136 requirement of the department to comply with requirements found in 42 C.F.R. Sec. 7137 59.5(a)(4) pertaining to providing certain services to a minor without parental consent.
 - (b) If the department's application described in Subsection (1) is denied, and at such time the United States Department of Health and Human Services creates a waiver application process, the department shall apply for a waiver from compliance with the requirements found in 42 C.F.R. Sec. 59.5(a)(4) pertaining to providing certain services to a minor without parental consent in order to be eligible for a grant under Title X of the Public Health Service Act, 42 U.S.C. Sec. 300 et seq.
 - (3) If the department receives a grant under Subsection (1), the department shall prioritize disbursement of grant funds in the prioritization order described in Subsection (4).
 - (4) (a) (i) When disbursing grant funds, the department shall give first priority to nonpublic entities that provide family planning services as well as other comprehensive services to enable women to give birth and parent or place for adoption.
- 7149 (ii) The department shall give preference to entities described in Subsection (4)(a)(i) 7150 that:
- 7151 (A) expand availability of prenatal and postnatal care in low-income and under-served 7152 areas of the state:
 - (B) provide support for a woman to carry a baby to term;
 - (C) emphasize the health and viability of the fetus; and
 - (D) provide education and maternity support.
 - (iii) If the department receives applications from qualifying nonpublic entities as described in Subsection (4)(a), the department shall disburse all of the grant funds to qualifying nonpublic entities described in Subsection (4)(a).
 - (b) If grant funds are not exhausted under Subsection (4)(a), or if no entity qualifies for grant funding under the criteria described in Subsection (4)(a), the department shall give second priority for grant funds to nonpublic entities that provide:
 - (i) family planning services; and
 - (ii) required primary health services as described in 42 U.S.C. Sec. 254b(b)(1)(A).
- 7164 (c) If grant funds are not exhausted under Subsections (4)(a) and (b), or if no entity 7165 qualifies for grant funding under the criteria described in Subsection (4)(a) or (b), the 7166 department shall give third priority for grant funds to public entities that provide family

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planning services, including state, county, or local community health clinics, and community action organizations.

(d) If grant funds are not exhausted under Subsections (4)(a), (b), and (c), or if no entity qualifies for grant funding under the criteria described in Subsection (4)(a), (b), or (c), the department shall give fourth priority for grant funds to nonpublic entities that provide family planning services but do not provide required primary health services as described in 42 U.S.C. Sec. 254b(b)(1)(A).

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- [26-7-1.] <u>26B-7-113.</u> Identification of major risk factors by department -- Education of public -- Establishment of programs.
- The department shall identify the major risk factors contributing to injury, sickness, death, and disability within the state and where it determines that a need exists, educate the public regarding these risk factors, and the department may establish programs to reduce or eliminate these factors except that such programs may not be established if adequate programs exist in the private sector.

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- [26-7-2.] <u>26B-7-114.</u> Office of Health Disparities Reduction -- Duties.
- 7184 (1) As used in this section:
- 7185 (a) "Multicultural or minority health issue" means a health issue, including a mental 7186 and oral health issue, of particular interest to cultural, ethnic, racial, or other subpopulations, 7187 including:
- 7188 (i) disparities in:
- 7189 (A) disease incidence, prevalence, morbidity, mortality, treatment, and treatment 7190 response; and
- 7191 (B) access to care; and
- 7192 (ii) cultural competency in the delivery of health care.
- 7193 (b) "Office" means the Office of Health Disparities Reduction created in this section.
- 7194 (2) There is created within the department the Office of Health Disparities Reduction.
- 7195 (3) The office shall:
- (a) promote and coordinate the research, data production, dissemination, education, and health promotion activities of the following that relate to a multicultural or minority health issue:

7199	(i) the department;
7200	(ii) local health departments;
7201	(iii) local mental health authorities;
7202	(iv) public schools;
7203	(v) community-based organizations; and
7204	(vi) other organizations within the state;
7205	(b) assist in the development and implementation of one or more programs to
7206	address a multicultural or minority health issue;
7207	(c) promote the dissemination and use of information on a multicultural or minority
7208	health issue by minority populations, health care providers, and others;
7209	(d) seek federal funding and other resources to accomplish the office's mission;
7210	(e) provide technical assistance to organizations within the state seeking funding to
7211	study or address a multicultural or minority health issue;
7212	(f) develop and increase the capacity of the office to:
7213	(i) ensure the delivery of qualified timely culturally appropriate translation services
7214	across department programs; and
7215	(ii) provide, when appropriate, linguistically competent translation and communication
7216	services for limited English proficiency individuals;
7217	(g) provide staff assistance to any advisory committee created by the department to
7218	study a multicultural or minority health issue; and
7219	(h) annually report to the Legislature on its activities and accomplishments.
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7221	[26-7-4.] <u>26B-7-115.</u> Utah Registry of Autism and Developmental Disabilities.
7222	(1) As used in this section, "URADD" means the Utah Registry of Autism and
7223	Developmental Disabilities.
7224	(2) The department may enter into an agreement with:
7225	(a) the University of Utah or another person for the operation of URADD; and
7226	(b) a person to conduct a public education campaign to:
7227	(i) improve public awareness of the early warning signs of autism spectrum disorders
7228	and developmental disabilities; and
7229	(ii) promote the early identification of autism spectrum disorders and developmental
7230	disabilities.

- (3) URADD shall consist of a database that collects information on people in the state 7231 7232 who have an autism spectrum disorder or a developmental disability. 7233 (4) The purpose of URADD is to assist health care providers to: 7234 (a) determine the risk factors and causes of autism spectrum disorders and 7235 developmental disabilities; 7236 (b) plan for and develop resources, therapies, methods of diagnoses, and other 7237 services for people with an autism spectrum disorder or a developmental disability; 7238 (c) facilitate measuring and tracking of treatment outcomes: 7239 (d) gather statistics relating to autism spectrum disorders and developmental 7240 disabilities; and 7241 (e) improve coordination and cooperation between agencies and other programs that 7242 provide services to people with an autism spectrum disorder or a developmental disability. 7243 7244 [26-7-7.] <u>26B-7-116.</u> Radon awareness campaign. 7245 The department shall, in consultation with the Division of Waste Management and 7246 Radiation Control, develop a statewide electronic awareness campaign to educate the public 7247 regarding: 7248 (1) the existence and prevalence of radon gas in buildings and structures; 7249 (2) the health risks associated with radon gas; 7250 (3) options for radon gas testing; and 7251 (4) options for radon gas remediation. 7252 7253 [26-7-8.] <u>26B-7-117.</u> Syringe exchange and education. 7254 (1) The following may operate a syringe exchange program in the state to prevent the 7255 transmission of disease and reduce morbidity and mortality among individuals who inject 7256 drugs, and those individuals' contacts: 7257 (a) a government entity, including: 7258
 - (i) the department;

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- (ii) a local health department[, as defined in Section 26A-1-102];
- 7260 (iii) the Division of [Substance Abuse and Mental Health within the Department of 7261 Human Services Integrated Healthcare within the department; or
 - (iv) a local substance abuse authority, as defined in Section 62A-15-102;

(b) a nongovernment entity, including: 7263 7264 (i) a nonprofit organization; or (ii) a for-profit organization; or 7265 7266 (c) any other entity that complies with Subsections (2) and (4). (2) An entity operating a syringe exchange program in the state shall: 7267 7268 (a) facilitate the exchange of an individual's used syringe for one or more new 7269 syringes in sealed sterile packages; 7270 (b) ensure that a recipient of a new syringe is given verbal and written instruction on: 7271 (i) methods for preventing the transmission of blood-borne diseases, including 7272 hepatitis C and human immunodeficiency virus; and 7273 (ii) options for obtaining: 7274 (A) services for the treatment of a substance use disorder; 7275 (B) testing for a blood-borne disease; and 7276 (C) an opiate antagonist under Chapter 55, Opiate Overdose Response Act; and 7277 (c) report annually to the department the following information about the program's 7278 activities: 7279 (i) the number of individuals who have exchanged syringes; 7280 (ii) the number of used syringes exchanged for new syringes; and 7281 (iii) the number of new syringes provided in exchange for used syringes. 7282 (3) No later than October 1, 2017, and every two years thereafter, the department 7283 shall report to the Legislature's Health and Human Services Interim Committee on: 7284 (a) the activities and outcomes of syringe programs operating in the state, including: 7285 (i) the number of individuals who have exchanged syringes; 7286 (ii) the number of used syringes exchanged for new syringes: 7287 (iii) the number of new syringes provided in exchange for used syringes; 7288 (iv) the impact of the programs on blood-borne infection rates; and 7289 (v) the impact of the programs on the number of individuals receiving treatment for a 7290 substance use disorder; 7291 (b) the potential for additional reductions in the number of syringes contaminated with 7292 blood-borne disease if the programs receive additional funding; 7293 (c) the potential for additional reductions in state and local government spending if the

programs receive additional funding;

7295 (d) whether the programs promote illicit use of drugs; and 7296 (e) whether the programs should be continued, continued with modifications, or 7297 terminated. 7298 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah 7299 Administrative Rulemaking Act, specifying how and when an entity operating a syringe 7300 exchange program shall make the report required by Subsection (2)(c). 7301 7302 [26-7-9.] 26B-7-118. Online public health education module. 7303 (1) As used in this section: 7304 (a) "Health care provider" means the same as that term is defined in Section 7305 78B-3-403. 7306 (b) "Nonimmune" means that a child or an individual: 7307 (i) has not received each vaccine required in Section 53G-9-305 and has not 7308 developed a natural immunity through previous illness to a vaccine-preventable disease, as 7309 documented by a health care provider; 7310 (ii) cannot receive each vaccine required in Section 53G-9-305; or 7311 (iii) is otherwise known to not be immune to a vaccine-preventable disease. 7312 (c) "Vaccine-preventable disease" means an infectious disease that can be prevented 7313 by a vaccination required in Section 53G-9-305. 7314 (2) The department shall develop an online education module regarding 7315 vaccine-preventable diseases: 7316 (a) to assist a parent of a nonimmune child to: 7317 (i) recognize the symptoms of vaccine-preventable diseases; 7318 (ii) respond in the case of an outbreak of a vaccine-preventable disease; 7319 (iii) protect children who contract a vaccine-preventable disease; and 7320 (iv) prevent the spread of vaccine-preventable diseases; 7321 (b) that contains only the following: (i) information about vaccine-preventable diseases necessary to achieve the goals 7322 7323 stated in Subsection (2)(a), including the best practices to prevent the spread of 7324 vaccine-preventable diseases; 7325 (ii) recommendations to reduce the likelihood of a nonimmune individual contracting

or transmitting a vaccine-preventable disease; and

(iii) information about additional available resources related to vaccine-preventable 7327 7328 diseases and the availability of low-cost vaccines; 7329 (c) that includes interactive questions or activities; and 7330 (d) that is expected to take an average user 20 minutes or less to complete, based on 7331 user testing. 7332 (3) In developing the online education module described in Subsection (2), the 7333 department shall consult with individuals interested in vaccination or vaccine-preventable 7334 diseases, including: 7335 (a) representatives from organizations of health care professionals; and 7336 (b) parents of nonimmune children. (4) The department shall make the online education module described in Subsection 7337 7338 (2) publicly available to parents through: 7339 (a) a link on the department's website; 7340 (b) county health departments, as that term is defined in Section 26A-1-102; 7341 (c) local health departments, as that term is defined in Section 26A-1-102; 7342 (d) local education agencies, as that term is defined in Section 53E-1-102; and 7343 (e) other public health programs or organizations. 7344 7345 [26-7-11.] 26B-7-119. Hepatitis C Outreach Pilot Program. (1) As used in this section, "Hepatitis C outreach organization" means a private 7346 7347 nonprofit organization that: 7348 (a) has an established relationship with individuals who are at risk of acquiring acute 7349 Hepatitis C; 7350 (b) helps individuals who need Hepatitis C treatment, but who do not qualify for payment of the treatment by the Medicaid program or another health insurer, to obtain 7351 7352 treatment; 7353 (c) has the infrastructure necessary for conducting Hepatitis C assessment, testing, and diagnosis, including clinical staff with the training and ability to provide: 7354 7355 (i) specimen collection for Hepatitis C testing; (ii) clinical assessments; 7356 (iii) consultation regarding blood-borne diseases; and 7357

(iv) case management services for patient support during Hepatitis C treatment; or

- 7359 (d) has a partnership with a health care facility that can provide clinical follow-up and 7360 medical treatment following Hepatitis C rapid antibody testing and confirmatory testing.
 - (2) There is created within the department the Hepatitis C Outreach Pilot Program.
- 7362 (3) Before September 1, 2020, the department shall, as funding permits, make grants 7363 to Hepatitis C outreach organizations in accordance with criteria established by the department under Subsection (4). 7364
 - (4) Before July 1, 2020, the department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (a) create application requirements for a grant from the program;
- 7368 (b) establish criteria for determining:
 - (i) whether a grant is awarded, including criteria that ensure grants are awarded to areas of the state, including rural areas, that would benefit most from the grant; and
 - (ii) the amount of a grant; and
 - (c) specify reporting requirements for the recipient of a grant under this section.
 - (5) Before October 1, 2021, and before October 1 every year thereafter, the department shall submit a report to the Health and Human Services Interim Committee and the Social Services Appropriations Subcommittee on the outcomes of the Hepatitis C Outreach Pilot Program.

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Part 2. Detection of Communicable Diseases and Public Health Emergencies.

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7380 [26-6-2.] 26B-7-201. Definitions.

7381 As used in this [chapter] part:

- (1) "Ambulatory surgical center" [is as] means the same as that term is defined in Section [26-21-2] 26B-2-201.
- (2) "Carrier" means an infected individual or animal who harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source of infection for man. The carrier state may occur in an individual with an infection that is inapparent throughout its course, commonly known as healthy or asymptomatic carrier, or during the incubation period, convalescence, and postconvalescence of an individual with a clinically recognizable disease, commonly known as incubatory carrier or convalescent carrier. Under either circumstance the carrier state may be of short duration, as a temporary

or transient carrier, or long duration, as a chronic carrier.

- (3) "Communicable disease" means illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host, either directly, as from an infected individual or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.
- (4) "Communicable period" means the time or times during which an infectious agent may be transferred directly or indirectly from an infected individual to another individual, from an infected animal to man, or from an infected man to an animal, including arthropods.
- (5) "Contact" means an individual or animal having had association with an infected individual, animal, or contaminated environment so as to have had an opportunity to acquire the infection.
 - (6) "End stage renal disease facility" is as defined in Section [26-21-2] 26B-2-201.
- (7) (a) "Epidemic" means the occurrence or outbreak in a community or region of cases of an illness clearly in excess of normal expectancy and derived from a common or propagated source.
- (b) The number of cases indicating an epidemic will vary according to the infectious agent, size, and type of population exposed, previous experience or lack of exposure to the disease, and time and place of occurrence.
- (c) Epidemicity is considered to be relative to usual frequency of the disease in the same area, among the specified population, at the same season of the year.
 - (8) "General acute hospital" is as defined in Section [26-21-2] <u>26B-2-201</u>.
- (9) "Incubation period" means the time interval between exposure to an infectious agent and appearance of the first sign or symptom of the disease in question.
- (10) "Infected individual" means an individual who harbors an infectious agent and who has manifest disease or inapparent infection. An infected individual is one from whom the infectious agent can be naturally acquired.
- (11) "Infection" means the entry and development or multiplication of an infectious agent in the body of man or animals. Infection is not synonymous with infectious disease; the result may be inapparent or manifest. The presence of living infectious agents on exterior surfaces of the body, or upon articles of apparel or soiled articles, is not infection, but contamination of such surfaces and articles.
 - (12) "Infectious agent" means an organism such as a virus, rickettsia, bacteria,

- 7423 fungus, protozoan, or helminth that is capable of producing infection or infectious disease.
- 7424 (13) "Infectious disease" means a disease of man or animals resulting from an 7425 infection.
- 7426 (14) "Isolation" means the separation, for the period of communicability, of infected 7427 individuals or animals from others, in such places and under such conditions as to prevent 7428 the direct or indirect conveyance of the infectious agent from those infected to those who are 7429 susceptible or who may spread the agent to others.
- 7430 (15) "Order of constraint" means the same as that term is defined in Section 7431 [26-23b-102] <u>26B-7-301</u>.
- 7432 (16) "Quarantine" means the restriction of the activities of well individuals or animals 7433 who have been exposed to a communicable disease during its period of communicability to 7434 prevent disease transmission.
- 7435 (17) "School" means a public, private, or parochial nursery school, licensed or 7436 unlicensed day care center, child care facility, family care home, headstart program, 7437 kindergarten, elementary, or secondary school through grade 12.
- 7438 (18) "Sexually transmitted disease" means those diseases transmitted through sexual intercourse or any other sexual contact.
 - (19) "Specialty hospital" is as defined in Section [26-21-2] 26B-2-201.

[26-6-3.] <u>26B-7-202.</u> Authority to investigate and control epidemic infections and communicable disease.

- (1) Subject to Subsection (3) and the restrictions in this title, the department has authority to investigate and control the causes of epidemic infections and communicable disease, and shall provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections or any other health hazard which may affect the public health.
- (2) (a) As part of the requirements of Subsection (1), the department shall distribute to the public and to health care professionals:
- 7451 (i) medically accurate information about sexually transmitted diseases that may cause 7452 infertility and sterility if left untreated, including descriptions of:
- 7453 (A) the probable side effects resulting from an untreated sexually transmitted disease, 7454 including infertility and sterility;

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- (B) medically accepted treatment for sexually transmitted diseases; 7455
- 7456 (C) the medical risks commonly associated with the medical treatment of sexually transmitted diseases; and 7457
 - (D) suggested screening by a private physician or physician assistant; and
- 7459 (ii) information about:

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- 7460 (A) public services and agencies available to assist individuals with obtaining 7461 treatment for the sexually transmitted disease;
- 7462 (B) medical assistance benefits that may be available to the individual with the 7463 sexually transmitted disease; and
- 7464 (C) abstinence before marriage and fidelity after marriage being the surest prevention of sexually transmitted disease. 7465
 - (b) The information required by Subsection (2)(a):
- 7467 (i) shall be distributed by the department and by local health departments free of 7468 charge;
- 7469 (ii) shall be relevant to the geographic location in which the information is distributed 7470 by:
 - (A) listing addresses and telephone numbers for public clinics and agencies providing services in the geographic area in which the information is distributed; and
 - (B) providing the information in English as well as other languages that may be appropriate for the geographic area.
 - (c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written material that includes the information required by this Subsection (2).
 - (ii) In addition to the written materials required by Subsection (2)(c)(i), the department may distribute the information required by this Subsection (2) by any other methods the department determines is appropriate to educate the public, excluding public schools, including websites, toll free telephone numbers, and the media.
 - (iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the written pamphlet developed by the department, the written material shall include either a website, or a 24-hour toll free telephone number that the public may use to obtain that information.
 - (3) (a) The Legislature may at any time terminate by joint resolution an order of constraint issued by the department as described in this section in response to a declared public health emergency.

7487	(b) A county governing body may at any time terminate by majority vote an order of
7488	constraint issued by the relevant local health department as described in this section in
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- [26-6-3.5.] 26B-7-203. Reporting AIDS and HIV infection -- Anonymous testing.
- 7492 (1) Because of the nature and consequences of Acquired Immunodeficiency 7493 Syndrome and Human Immunodeficiency Virus infection, the department shall:
 - (a) require reporting of those conditions; and
 - (b) utilize contact tracing and other methods for "partner" identification and notification. The department shall, by rule, define individuals who are considered "partners" for purposes of this section.
 - (2) (a) The requirements of Subsection (1) do not apply to seroprevalence and other epidemiological studies conducted by the department.
 - (b) The requirements of Subsection (1) do not apply to, and anonymity shall be provided in, research studies conducted by universities or hospitals, under the authority of institutional review boards if those studies are funded in whole or in part by research grants and if anonymity is required in order to obtain the research grant or to carry out the research.
 - (3) For all purposes of this [chapter] part, Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection are considered communicable and infectious diseases.
 - (4) The department may establish or allow one site or agency within the state to provide anonymous testing.
 - (a) The site or agency that provides anonymous testing shall maintain accurate records regarding:
 - (i) the number of HIV positive individuals that it is able to contact or inform of their condition:
 - (ii) the number of HIV positive individuals who receive extensive counseling;
- 7514 (iii) how many HIV positive individuals provide verifiable information for partner 7515 notification; and
 - (iv) how many cases in which partner notification is carried through.
- 7517 (b) If the information maintained under Subsection (4)(a) indicates anonymous testing 7518 is not resulting in partner notification, the department shall phase out the anonymous testing

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7519	program allowed by this Subsection (4).

- [26-6-4.] <u>26B-7-204.</u> Involuntary examination, treatment, isolation, and quarantine.
- 7523 (1) The following individuals or groups of individuals are subject to examination, 7524 treatment, quarantine, or isolation under a department order of restriction:
 - (a) an individual who is infected or suspected to be infected with a communicable disease that poses a threat to the public health and who does not take action as required by the department or the local health department to prevent spread of the disease;
 - (b) an individual who is contaminated or suspected to be contaminated with an infectious agent that poses a threat to the public health and that could be spread to others if remedial action is not taken;
 - (c) an individual who is in a condition or suspected condition which, if exposed to others, poses a threat to public health, or is in a condition which if treatment is not completed will pose a threat to public health; and
 - (d) an individual who is contaminated or suspected to be contaminated with a chemical or biological agent that poses a threat to the public health and that could be spread to others if remedial action is not taken.
 - (2) If an individual refuses to take action as required by the department or the local health department to prevent the spread of a communicable disease, infectious agent, or contamination, the department or the local health department may order involuntary examination, treatment, quarantine, or isolation of the individual and may petition the [district] court to order involuntary examination, treatment, quarantine, or isolation in accordance with [Title 26, Chapter 6b, Communicable Diseases -] Part 4, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases.

[26-6-5.] <u>26B-7-205.</u> Willful introduction of communicable disease a misdemeanor.

Any person who willfully or knowingly introduces any communicable or infectious disease into any county, municipality, or community is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

7551	[26-6-6.] <u>26B-7-206.</u> Duty to report individual suspected of having
7552	communicable disease.
7553	The following shall report to the department or the local health department regarding
7554	any individual suffering from or suspected of having a disease that is communicable, as
7555	required by department rule:
7556	(1) health care providers as defined in Section 78B-3-403;
7557	(2) facilities licensed under [Title 26, Chapter 21,] Chapter 2, Part 2, Health Care
7558	Facility Licensing and Inspection [Act];
7559	(3) health care facilities operated by the federal government;
7560	(4) mental health facilities;
7561	(5) care facilities licensed by the [Department of Human Services] department;
7562	(6) nursing homes and other care facilities;
7563	(7) dispensaries, clinics, or laboratories that diagnose, test, or otherwise care for
7564	individuals who are suffering from a disease suspected of being communicable;
7565	(8) individuals who have knowledge of others who have a communicable disease;
7566	(9) individuals in charge of schools having responsibility for any individuals who have
7567	a disease suspected of being communicable; and
7568	(10) child care programs, as defined in Section [26-39-102] <u>26B-X-XXX</u> .
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7570	[26-6-7.] <u>26B-7-207.</u> Designation of communicable diseases by department
7571	Establishment of rules for detection, reporting, investigation, prevention, and control.
7572	The department may designate those diseases which are communicable, of concern
7573	to the public health, and reportable; and establish rules for the detection, reporting,
7574	investigation, prevention, and control of communicable diseases, epidemic infections, and
7575	other health hazards that affect the public health.
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7577	[26-6-8.] <u>26B-7-208.</u> Tuberculosis Duty of department to investigate, control,
7578	and monitor.
7579	(1) The department shall conduct or oversee the investigation, control, and monitoring
7580	of suspected or confirmed tuberculosis infection and disease within the state. Local health
7581	departments shall investigate, control, and monitor suspected or confirmed tuberculosis
7582	infection and disease within their respective jurisdictions.

7583	(2) A health care provider who treats an individual with suspected or confirmed
7584	tuberculosis shall treat the individual according to guidelines established by the department.
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7586	[26-6-9.] <u>26B-7-209.</u> Tuberculosis Testing of high risk individuals.
7587	Individuals at high risk for tuberculosis shall be tested as required by department rule
7588	The department rule] , which:
7589	(1) shall establish criteria to identify individuals who are at high risk for tuberculosis;
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7591	(2) may establish who is responsible for the costs of the testing.
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7593	[26-6-11.] <u>26B-7-210.</u> Rabies or other animal disease Investigation and order
7594	of quarantine.
7595	(1) As used in this section, "quarantine" means strict confinement upon the private
7596	premises of the owners, under restraint by leash, closed cage or paddock of all animals
7597	specified by the order.
7598	(2) (a) Whenever rabies or any other animal disease dangerous to the health of
7599	human beings is reported, the department shall investigate to determine whether such
7600	disease exists, and the probable area of the state in which man or beast is thereby
7601	endangered.
7602	(b) If the department finds that such disease exists, a quarantine may be declared
7603	against all animals designated in the quarantine order and within the area specified in the
7604	order.
7605	(c) If the quarantine is for the purpose of preventing the spread of rabies or
7606	hydrophobia, the order shall contain a warning to the owners of dogs within the quarantined
7607	area to confine or muzzle all dogs to prevent biting.
7608	(d) Any dog not muzzled found running at large in a quarantined area or any dog
7609	known to have been removed from or escaped from such area, may be killed by any person
7610	without liability therefor.
7611	(3) Following the order of quarantine the department shall make a thorough
7612	investigation as to the extent of the disease, the probable number of persons and beasts
7613	exposed, and the area involved

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(4) During the period any quarantine order is in force all peace officers may kill or

capture and hold for further action by the department all animals in a quarantined area not held in restraint on private premises.

[26-6-15.] <u>26B-7-211.</u> Rabies or other animal disease -- Possession of animal in violation of [chapter] <u>part</u> a misdemeanor.

Any person in possession of any animal being held in violation of this [chapter] part is guilty of a class C misdemeanor.

[26-6-16.] <u>26B-7-212.</u> Venereal diseases declared dangerous to public health.

Syphilis, gonorrhea, lymphogranuloma inguinale (venereum) and chancroid are hereby declared to be contagious, infectious, communicable and dangerous to the public health.

[26-6-17.] <u>26B-7-213.</u> Venereal disease -- Examinations by authorities -- Treatment of infected persons.

State, county, and municipal health officers within their respective jurisdictions may make examinations of persons reasonably suspected of being infected with venereal disease. Persons infected with venereal disease shall be required to report for treatment to either a reputable physician or physician assistant and continue treatment until cured or to submit to treatment provided at public expense until cured.

[26-6-18.] <u>26B-7-214.</u> Venereal disease -- Consent of minor to treatment.

- (1) A consent to medical care or services by a hospital or public clinic or the performance of medical care or services by a licensed physician or physician assistant executed by a minor who is or professes to be afflicted with a sexually transmitted disease, shall have the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as a consent given by a person of full legal age and capacity, the infancy of the minor and any contrary provision of law notwithstanding.
- (2) The consent of the minor is not subject to later disaffirmance by reason of minority at the time it was given and the consent of no other person or persons shall be necessary to authorize hospital or clinical care or services to be provided to the minor by a licensed physician or physician assistant.

(3) The provisions of this section shall apply also to minors who profess to be in need
of hospital or clinical care and services or medical care or services provided by a physician or
physician assistant for suspected sexually transmitted disease, regardless of whether such
professed suspicions are subsequently substantiated on a medical basis.

[26-6-19.] <u>26B-7-215.</u> Venereal disease -- Examination and treatment of persons in prison or jail.

- (1) (a) All persons confined in any state, county, or city prison or jail shall be examined, and if infected, treated for venereal diseases by the health authorities.
- (b) The prison authorities of every state, county, or city prison or jail shall make available to the health authorities such portion of the prison or jail as may be necessary for a clinic or hospital wherein all persons suffering with venereal disease at the time of the expiration of their terms of imprisonment, shall be isolated and treated at public expense until cured.
- (2) (a) The department may require persons suffering with venereal disease at the time of the expiration of their terms of imprisonment to report for treatment to a licensed physician or physician assistant or submit to treatment provided at public expense in lieu of isolation.
- (b) Nothing in this section shall interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

[26-6-20.] <u>26B-7-216.</u> Serological testing of pregnant or recently delivered women.

- (1) As used in this part, a "standard serological test" means a test for syphilis approved by the department and made at an approved laboratory.
- [(1)] (2) (a) Every licensed physician and surgeon attending a pregnant or recently delivered woman for conditions relating to her pregnancy shall take or cause to be taken a sample of blood of the woman at the time of first examination or within 10 days thereafter.
- 7675 (b) The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis.
- 7677 (c) The provisions of this section do not apply to any female who objects thereto on the grounds that she is a bona fide member of a specified, well recognized religious

organization whose teachings are contrary to the tests.

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- [(2)] (3) (a) Every other person attending a pregnant or recently delivered woman, who is not permitted by law to take blood samples, shall within 10 days from the time of first attendance cause a sample of blood to be taken by a licensed physician or physician assistant.
 - (b) The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis.
 - [(3)] (4) (a) An approved laboratory is a laboratory approved by the department according to its rules governing the approval of laboratories for the purpose of this title.
 - (b) In submitting the sample to the laboratory the physician or physician assistant shall designate whether it is a prenatal test or a test following recent delivery.
 - [(4) For the purpose of this chapter, a "standard serological test" means a test for syphilis approved by the department and made at an approved laboratory.]
- 7692 (5) The laboratory shall transmit a detailed report of the standard serological test, 7693 showing the result thereof to the physician or physician assistant.

[26-6-27.] <u>26B-7-217.</u> Information regarding communicable or reportable diseases confidentiality -- Exceptions.

- (1) (a) Information collected [pursuant to this chapter] under this part in the possession of the department or local health departments relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this [chapter] part shall be held by the department and local health departments as strictly confidential.
- (b) The department and local health departments may not release or make public that information upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided by this section.
- (2) The information described in Subsection (1) may be released by the department or local health departments only in accordance with the requirements of this [chapter] part and as follows:
- (a) specific medical or epidemiological information may be released with the written consent of the individual identified in that information or, if that individual is deceased, his next-of-kin;

- (b) specific medical or epidemiological information may be released to medical personnel or peace officers in a medical emergency, as determined by the department in accordance with guidelines it has established, only to the extent necessary to protect the health or life of the individual identified in the information, or of the attending medical personnel or law enforcement or public safety officers;
- (c) specific medical or epidemiological information may be released to authorized personnel within the department, local health departments, public health authorities, official health agencies in other states, the United States Public Health Service, the Centers for Disease Control and Prevention, or when necessary to continue patient services or to undertake public health efforts to interrupt the transmission of disease;
- (d) if the individual identified in the information is under the age of 18, the information may be released to the Division of Child and Family Services within the [Department of Human Services] department in accordance with Section 80-2-602[. If] _, and if that information is required in a court proceeding involving child abuse or sexual abuse under Title 76, Chapter 5, Offenses Against the Individual, the information shall be disclosed in camera and sealed by the court upon conclusion of the proceedings;
- (e) specific medical or epidemiological information may be released to authorized personnel in the department or in local health departments, and to the courts, to carry out the provisions of this title, and rules adopted by the department in accordance with this title;
- (f) specific medical or epidemiological information may be released to blood banks, organ and tissue banks, and similar institutions for the purpose of identifying individuals with communicable diseases. The department may, by rule, designate the diseases about which information may be disclosed under this subsection, and may choose to release the name of an infected individual to those organizations without disclosing the specific disease;
- (g) specific medical or epidemiological information may be released in such a way that no individual is identifiable;
- (h) specific medical or epidemiological information may be released to a "health care provider" as defined in Section 78B-3-403, health care personnel, and public health personnel who have a legitimate need to have access to the information in order to assist the patient, or to protect the health of others closely associated with the patient;
- (i) specific medical or epidemiological information regarding a health care provider, as defined in Section 78B-3-403, may be released to the department, the appropriate local

- health department, and the Division of Professional Licensing within the Department of Commerce, if the identified health care provider is endangering the safety or life of any individual by his continued practice of health care;
 - (j) specific medical or epidemiological information may be released in accordance with Section 26-6-31 if an individual is not identifiable; and
 - (k) specific medical or epidemiological information may be released to a state agency as defined in Section 67-27-102, to perform the analysis described in Subsection [26-6-32] <u>26B-7-222</u> (4) if the state agency agrees to act in accordance with the requirements in this [chapter] part.
- 7752 (3) The provisions of Subsection (2)(h) do not create a duty to warn third parties, but 7753 is intended only to aid health care providers in their treatment and containment of infectious 7754 disease.

[26-6-28.] <u>26B-7-218.</u> Protection from examination in legal proceedings -- Exceptions.

- (1) Except as provided in Subsection (2), an officer or employee of the department or of a local health department may not be examined in a legal proceeding of any kind or character as to the existence or content of information retained pursuant to this [chapter] part or obtained as a result of an investigation conducted pursuant to this [chapter] part, without the written consent of the individual who is identified in the information or, if that individual is deceased, the consent of his next-of-kin.
- (2) This section does not restrict testimony and evidence provided by an employee or officer of the department or a local health department about:
- (a) persons who are under restrictive actions taken by the department in accordance with Subsection [26-6-27] 26B-7-317 (2)(e); or
- (b) individuals or groups of individuals subject to examination, treatment, isolation, and quarantine actions under [Chapter 6b, Communicable Diseases -] Part 4, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases.

[26-6-29.] <u>26B-7-219.</u> Violation -- Penalty.

7773 (1) Any individual or entity entitled to receive confidential information from the 7774 [Department of Health] department or a local health department under this [chapter] part,

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other than the individual identified in that information, who violates this [chapter] part by releasing or making public confidential information, or by otherwise breaching the confidentiality requirements of this [chapter] part, is guilty of a class B misdemeanor.

(2) This [chapter] part does not apply to any individual or entity that holds or receives information relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this [chapter] part, if that individual or entity has obtained the information from a source other than the department or a local health department.

[26-6-30.] <u>26B-7-220.</u> Exclusions from confidentiality requirements.

- (1) The provisions of this [chapter] part do not apply to:
- (a) information that relates to an individual who is in the custody of the Department of Corrections, a county jail, or the Division of Juvenile Justice Services within the [Department of Human Services] department;
- (b) information that relates to an individual who has been in the custody of the Department of Corrections, a county jail, or the Division of Juvenile Justice Services within the [Department of Human Services] department, if liability of either of those departments, a county, or a division, or of an employee of a department, division, or county, is alleged by that individual in a lawsuit concerning transmission of an infectious or communicable disease; or
- (c) any information relating to an individual who willfully or maliciously or with reckless disregard for the welfare of others transmits a communicable or infectious disease.
- (2) Nothing in this [chapter] part limits the right of the individual identified in the information described in Subsection [26-6-27] 26B-7-217 (1) to disclose that information.

[26-6-31.] <u>26B-7-221.</u> Public reporting of health care associated infections.

(1) (a) An ambulatory surgical facility, a general acute hospital, a specialty hospital, an end stage renal disease facility, and other facilities as required by rules of the Center for Medicare and Medicaid Services shall give the department access to the facility's data on the incidence and rate of health care associated infections that the facility submits to the National Healthcare Safety Network in the [Center] United State Centers for Disease Control and Prevention pursuant to the Center for Medicare and Medicaid Services rules for infection

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- 7808 (b) Access to data under this Subsection (1) may include data sharing through the National Healthcare Safety Network.
- (2) (a) The department shall, beginning May 1, 2013, use the data submitted by the facilities in accordance with Subsection (1) to compile an annual report on health care associated infections in ambulatory surgical facilities, general acute hospitals, and specialty hospitals for public distribution in accordance with the requirements of this subsection. The department shall publish the report on the department's website and the Utah Health Exchange.
- 7816 (b) The department's report under this section shall:
- 7817 (i) include the following health care associated infections as required by the Center for 7818 Medicare and Medicaid Services and protocols adopted by the National Healthcare Safety 7819 Network in the [Center] Centers for Disease Control and Prevention:
 - (A) central line associated bloodstream infections;
 - (B) catheter associated urinary tract infections;
- 7822 (C) surgical site infections from procedures on the colon or an abdominal hysterectomy;
 - (D) methicillin-resistant staphylococcus aureus bacteremia;
- 7825 (E) clostridium difficile of the colon; and
- (F) other health care associated infections when reporting is required by the Center for Medicare and Medicaid Services and protocols adopted by the National Healthcare Safety Network in the [Center] Centers for Disease Control and Prevention;
- 7829 (ii) include data on the rate of health care associated infections:
 - (A) for the infection types described in Subsection (2)(b)(i); and
- 7831 (B) by health care facility or hospital;
- 7832 (iii) include data on how the rate of health care associated infections in ambulatory 7833 surgical facilities, general acute hospitals, and specialty hospitals compares with the rates in 7834 other states;
- 7835 (iv) in compiling the report described in Subsection (2)(a), use analytical methodologies that meet accepted standards of validity and reliability;
- 7837 (v) clearly identify and acknowledge, in the report, the limitations of the data sources and analytic methodologies used to develop comparative facility or hospital information;

- 7839 (vi) decide whether information supplied by a facility or hospital under Subsection (1) 7840 is appropriate to include in the report;
- 7841 (vii) adjust comparisons among facilities and hospitals for patient case mix and other 7842 relevant factors, when appropriate; and
 - (viii) control for provider peer groups, when appropriate.
- (3) Before posting or releasing the report described in Subsection (2)(a), the 7844 7845 department shall:
- 7846 (a) disclose to each ambulatory surgical facility, general acute hospital, and specialty 7847 hospital whose data is included in the report:
 - (i) the entire methodology for analyzing the data; and
 - (ii) the comparative facility or hospital information and other information the department has compiled for the facility or hospital; and
- 7851 (b) give the facility or hospital 30 days to suggest corrections or add explanatory 7852 comments about the data.
 - (4) The department shall develop and implement effective safeguards to protect against the unauthorized use or disclosure of ambulatory surgical facility, general acute hospital, and specialty hospital data, including the dissemination of inconsistent, incomplete, invalid, inaccurate, or subjective data.
 - (5) The report described in Subsection (2)(a):
 - (a) may include data that compare and identify general acute hospitals, ambulatory surgical centers, and specialty hospitals;
 - (b) shall contain only statistical, non-identifying information and may not disclose the identity of:
 - (i) an employee of an ambulatory surgical facility, a general acute hospital, or a specialty hospital;
 - (ii) a patient; or
 - (iii) a health care provider licensed under Title 58, Occupations and Professions; and
 - (c) may not be used as evidence in a criminal, civil, or administrative proceeding.
- 7867 (6) This section does not limit the department's authority to investigate and collect 7868 data regarding infections and communicable diseases under other provisions of state or 7869 federal law.

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- 7871 [26-6-32.] 26B-7-222. Testing for COVID-19 for high-risk individuals at care facilities -- Collection and release of information regarding risk factors and comorbidities for COVID-19.
 - (1) As used in this section:
- 7875 (a) "Care facility" means a facility described in Subsections [26-6-6] <u>26B-7-206</u> (2) 7876 through (6).
- 7877 (b) "COVID-19" means the same as that term is defined in Section 78B-4-517.
- 7878 (2) (a) At the request of the department or a local health department, an individual who meets the criteria established by the department under Subsection (2)(b) shall submit to testing for COVID-19.
- 7881 (b) The department:

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- 7882 (i) shall establish protocols to identify and test individuals who are present at a care facility and are at high risk for contracting COVID-19;
- 7884 (ii) may establish criteria to identify care facilities where individuals are at high risk for COVID-19; and
 - (iii) may establish who is responsible for the costs of the testing.
- 7887 (c) (i) The protocols described in Subsection (2)(b)(i) shall:
- 7888 (A) notwithstanding Subsection (2)(a), permit an individual who is a resident of a care facility to refuse testing; and
 - (B) specify criteria for when an individual's refusal to submit to testing under Subsection (2)(c)(i)(A) endangers the health or safety of other individuals at the care facility.
 - (ii) Notwithstanding any other provision of state law, a care facility may discharge a resident who declines testing requested by the department under Subsection (2)(a) if:
 - (A) under the criteria specified by the department under Subsection (2)(c)(i)(B), the resident's refusal to submit to testing endangers the health or safety of other individuals at the care facility; and
 - (B) discharging the resident does not violate federal law.
- 7898 (3) The department may establish protocols to collect information regarding the individual's age and relevant comorbidities from an individual who receives a positive test result for COVID-19.
- 7901 (4) (a) The department shall publish deidentified information regarding comorbidities 7902 and other risk factors for COVID-19 in a manner that is accessible to the public.

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7903	(b) The department may work with a state agency as defined in Section 67-27-102, to
7904	perform the analysis or publish the information described in Subsection (4)(a).
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7906	[26-6-42.] <u>26B-7-223.</u> Department support for local education agency test to
7907	stay programs Department guidance for local education agencies.
7908	(1) As used in this section:
7909	(a) "Case threshold" means the same as that term is defined in Section 53G-9-210.
7910	(b) "COVID-19" means the same as that term is defined in Section 53G-9-210.
7911	(c) "Local education agency" or "LEA" means the same as that term is defined in
7912	Section 53G-9-210.
7913	(d) "Test to stay program" means the same as that term is defined in Section
7914	53G-9-210.
7915	(2) At the request of an LEA, the department shall provide support for the LEA's test
7916	to stay program if a school in the LEA reaches the case threshold, including by providing:
7917	(a) COVID-19 testing supplies;
7918	(b) a mobile testing unit; and
7919	(c) other support requested by the LEA related to the LEA's test to stay program.
7920	(3) The department shall ensure that guidance the department provides to LEAs
7921	related to test to stay programs complies with Section 53G-9-210, including the determination
7922	of whether a school meets a case threshold described in Subsection 53G-9-210(3).
7923	(4) Subsection (2) regarding the requirement to support an LEA's test to stay program
7924	does not apply after February 2, 2022, unless the test to stay requirement is triggered under
7925	Subsection 53G-9-210(2)(c).
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7927	[26-7-14.] <u>26B-7-224.</u> Study on violent incidents and fatalities involving
7928	substance abuse Report.
7929	(1) As used in this section:
7930	(a) "Drug overdose event" means an acute condition, including a decreased level of
7931	consciousness or respiratory depression resulting from the consumption or use of a
7932	controlled substance, or another substance with which a controlled substance or alcohol was

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(b) "Substance abuse" means the misuse or excessive use of alcohol or other drugs

combined, that results in an individual requiring medical assistance.

7935	or substances.
7936	(c) "Violent incident" means:
7937	(i) aggravated assault as described in Section 76-5-103;
7938	(ii) child abuse as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and
7939	76-5-114;
7940	(iii) an offense described in Title 76, Chapter 5, Part 2, Criminal Homicide;
7941	(iv) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
7942	(v) a burglary offense described in Sections 76-6-202 through 76-6-204.5;
7943	(vi) an offense described in Title 76, Chapter 6, Part 3, Robbery;
7944	(vii) a domestic violence offense, as defined in Section 77-36-1; and
7945	(viii) any other violent offense, as determined by the department.
7946	(2) In 2021 and continuing every other year, the department shall provide a report
7947	before October 1 to the Health and Human Services Interim Committee regarding the
7948	number of:
7949	(a) violent incidents and fatalities that occurred in the state during the preceding
7950	calendar year that, at the time of occurrence, involved substance abuse;
7951	(b) drug overdose events in the state during the preceding calendar year; and
7952	(c) recommendations for legislation, if any, to prevent the occurrence of the events
7953	described in Subsections (2)(a) and (b).
7954	[(3) Before October 1, 2020, the department shall:
7955	(a) determine what information is necessary to complete the report described in
7956	Subsection (2) and from which local, state, and federal agencies the information may be
7957	obtained;
7958	(b) determine the cost of any research or data collection that is necessary to complete
7959	the report described in Subsection (2);
7960	(c) make recommendations for legislation, if any, that is necessary to facilitate the
7961	research or data collection described in Subsection (3)(b), including recommendations for
7962	legislation to assist with information sharing between local, state, federal, and private entities
7963	and the department; and
7964	(d) report the findings described in Subsections (3)(a) through (c) to the Health and
7965	Human Services Interim Committee.]
7966	[(4)] (3) The department may contract with another state agency, private entity, or

7967	research institution to assist the department with the report described in Subsection (2).
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7969	[26-8d-102.] <u>26B-7-225.</u> Statewide stroke registry.
7970	(1) The department shall establish and supervise a statewide stroke registry to:
7971	(a) analyze information on the incidence, severity, causes, outcomes, and
7972	rehabilitation of stroke;
7973	(b) promote optimal care for stroke patients;
7974	(c) alleviate unnecessary death and disability from stroke;
7975	(d) encourage the efficient and effective continuum of patient care, including
7976	prevention, prehospital care, hospital care, and rehabilitative care; and
7977	(e) minimize the overall cost of stroke.
7978	(2) The department shall utilize the registry established under Subsection (1) to
7979	assess:
7980	(a) the effectiveness of the data collected by the registry; and
7981	(b) the impact of the statewide stroke registry on the provision of stroke care.
7982	(3) (a) The department shall make rules in accordance with Title 63G, Chapter 3,
7983	Utah Administrative Rulemaking Act, to establish:
7984	(i) the data elements that general acute hospitals shall report to the registry; and
7985	(ii) the time frame and format for reporting.
7986	(b) The data elements described in Subsection (3)(a)(i) shall include consensus
7987	metrics consistent with data elements used in nationally recognized data set platforms for
7988	stroke care.
7989	(c) The department shall permit a general acute hospital to submit data required
7990	under this section through an electronic exchange of clinical health information that meets
7991	the standards established by the department under Section [26-1-37] <u>26B-7-211</u> .
7992	(4) A general acute hospital shall submit stroke data in accordance with rules
7993	established under Subsection (3).
7994	(5) Data collected under this section shall be subject to [Chapter 3,] Part 2, Health
7995	Statistics.

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accordance with this section.

(6) No person may be held civilly liable for providing data to the department in

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7999	[26-8d-103.] <u>26B-7-226.</u> Statewide cardiac registry.
8000	(1) The department shall establish and supervise a statewide cardiac registry to:
8001	(a) analyze information on the incidence, severity, causes, outcomes, and
8002	rehabilitation of cardiac diseases;
8003	(b) promote optimal care for cardiac patients;
8004	(c) alleviate unnecessary death and disability from cardiac diseases;
8005	(d) encourage the efficient and effective continuum of patient care, including
8006	prevention, prehospital care, hospital care, and rehabilitative care; and
8007	(e) minimize the overall cost of cardiac care.
8008	(2) The department shall utilize the registry established under Subsection (1) to
8009	assess:
8010	(a) the effectiveness of the data collected by the registry; and
8011	(b) the impact of the statewide cardiac registry on the provision of cardiac care.
8012	(3) (a) The department shall make rules in accordance with Title 63G, Chapter 3,
8013	Utah Administrative Rulemaking Act, to establish:
8014	(i) the data elements that general acute hospitals shall report to the registry; and
8015	(ii) the time frame and format for reporting.
8016	(b) The data elements described in Subsection (3)(a)(i) shall include consensus
8017	metrics consistent with data elements used in nationally recognized data set platforms for
8018	cardiac care.
8019	(c) The department shall permit a general acute hospital to submit data required
8020	under this section through an electronic exchange of clinical health information that meets
8021	the standards established by the department under Section [26-1-37] <u>26B-6-211</u> .
8022	(4) A general acute hospital shall submit cardiac data in accordance with rules
8023	established under Subsection (3).
8024	(5) Data collected under this section shall be subject to [Chapter 3] Part 2, Health
8025	Statistics.
8026	(6) No person may be held civilly liable for providing data to the department in
8027	accordance with this section.
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8029	[26-5-1.] <u>26B-7-227.</u> ["]Chronic disease[" defined] control Establishing a
8030	prevention program Detection, monitoring, and community education

8031	(1) As used in this [chapter] section, "chronic disease" means an impairment or
8032	deviation from the normal functioning of the human body having one or more of the following
8033	characteristics:
8034	[(1) It] <u>(a)</u> is permanent;
8035	[(2) It] <u>(b)</u> leaves residual disability;
8036	[(3) It] (c) is caused by nonreversible pathological alterations;
8037	[(4) It] <u>(d)</u> requires special patient education and instruction for rehabilitation; or
8038	[(5) It] (e) may require a long period of supervision, observation and care.
8039	(2) The department shall establish and operate reasonable programs to prevent,
8040	delay, and detect the onset of chronic diseases including cancer, diabetes, cardiovascular
8041	and pulmonary diseases, genetic diseases, and such other chronic diseases as the
8042	department determines are important in promoting, protecting, and maintaining the public's
8043	health.
8044	(3) (a) The department shall develop and maintain a system for detecting and
8045	monitoring chronic diseases within the state and shall investigate and determine the
8046	epidemiology of those conditions which contributed to preventable and premature sickness,
8047	or both, and to death and disability.
8048	(b) Beginning July 1, 2004, the department shall consider the disease known as
8049	"lupus" a chronic disease subject to the detection and monitoring provisions of Subsection
8050	<u>(3)(a).</u>
8051	(4) The department shall establish programs of community and professional
8052	education relevant to the detection, prevention and control of chronic diseases.
8053	
8054	Part 3. Treatment, Isolation, and Quarantine Procedures for Communicable
8055	Diseases.
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8057	[26-23b-102.] <u>26B-7-301.</u> Definitions.
8058	As used in this [chapter] <u>part</u> :
8059	(1) "Bioterrorism" means:
8060	(a) the intentional use of any microorganism, virus, infectious substance, or biological
8061	product to cause death, disease, or other biological malfunction in a human, an animal, a
8062	plant, or another living organism in order to influence, intimidate, or coerce the conduct of

8063 government or a civilian population; and

- 8064 (b) includes anthrax, botulism, small pox, plague, tularemia, and viral hemorrhagic 8065 fevers.
- 8066 (2) "Diagnostic information" means a clinical facility's record of individuals who 8067 present for treatment, including the reason for the visit, chief complaint, presenting diagnosis, 8068 final diagnosis, and any pertinent lab results.
 - (3) "Epidemic or pandemic disease":
- 8070 (a) means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy; and
- 8072 (b) includes diseases designated by the department which have the potential to cause 8073 serious illness or death.
 - (4) "Exigent circumstances" means a significant change in circumstances following the expiration of a public health emergency declared in accordance with this title that:
 - (a) substantially increases the threat to public safety or health relative to the circumstances in existence when the public health emergency expired;
 - (b) poses an imminent threat to public safety or health; and
- 8079 (c) was not known or foreseen and could not have been known or foreseen at the 8080 time the public health emergency expired.
- 8081 (5) "First responder" means:
 - (a) a law enforcement officer as defined in Section 53-13-103;
 - (b) emergency medical service personnel as defined in Section 26B-2-XXX;
- 8084 (c) firefighters; and

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- 8085 (d) public health personnel having jurisdiction over the location where an individual subject to restriction is found.
- 8087 [(5)] (6) "Health care provider" means the same as that term is defined in Section 8088 78B-3-403.
- 8089 [(6)] <u>(7)</u> "Legislative emergency response committee" means the same as that term 8090 is defined in Section 53-2a-203.
- 8091 [(7)] (8) (a) "Order of constraint" means an order, rule, or regulation issued in response to a declared public health emergency under this [chapter] part, that:
- (i) applies to all or substantially all:
- (A) individuals or a certain group of individuals; or

8095	(B) public places or certain types of public places; and
8096	(ii) for the protection of the public health and in response to the declared public health
8097	emergency:
8098	(A) establishes, maintains, or enforces isolation or quarantine;
8099	(B) establishes, maintains, or enforces a stay-at-home order;
8100	(C) exercises physical control over property or individuals;
8101	(D) requires an individual to perform a certain action or engage in certain behavior; or
8102	(E) closes theaters, schools, or other public places or prohibits gatherings of people
8103	to protect the public health.
8104	(b) "Order of constraint" includes a stay-at-home order.
8105	(9) "Order of restriction" means an order issued by a department or a district court
8106	which requires an individual or group of individuals who are subject to restriction to submit to
8107	an examination, treatment, isolation, or quarantine.
8108	[(8)] <u>(10)</u> "Public health emergency" means an occurrence or imminent credible
8109	threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic
8110	disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial
8111	risk of a significant number of human fatalities or incidents of permanent or long-term
8112	disability. Such illness or health condition includes an illness or health condition resulting
8113	from a natural disaster.
8114	(11) "Public health official" means:
8115	(a) the executive director or the executive director's authorized representative; or
8116	(b) the executive director of a local health department or the executive director's
8117	authorized representative.
8118	[(9)] <u>(12)</u> "Reportable emergency illness and health condition" includes the diseases
8119	conditions, or syndromes designated by the department.
8120	[(10)] (13) "Stay-at-home order" means an order of constraint that:
8121	(a) restricts movement of the general population to suppress or mitigate an epidemic
8122	or pandemic disease by directing individuals within a defined geographic area to remain in
8123	their respective residences; and
8124	(b) may include exceptions for certain essential tasks.

means the individual or group of individuals is:

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(14) "Subject to restriction" as applied to an individual, or a group of individuals,

8127	(a) infected or suspected to be infected with a communicable disease that poses a
8128	threat to the public health and who does not take action as required by the department to
8129	prevent spread of the disease;
8130	(b) contaminated or suspected to be contaminated with an infectious agent that poses
8131	a threat to the public health, and that could be spread to others if remedial action is not
8132	taken;
8133	(c) in a condition or suspected condition which, if the individual is exposed to others,
8134	poses a threat to public health, or is in a condition which if treatment is not completed the
8135	individual will pose a threat to public health; or
8136	(d) contaminated or suspected to be contaminated with a chemical or biological agent
8137	that poses a threat to the public health and that could be spread to others if remedial action
8138	is not taken.
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8140	[26-1-12.] <u>26B-7-302.</u> Executive director Power to order abatement of public
8141	health hazard.
8142	If the executive director finds that a condition of filth, sanitation, or other health hazard
8143	exists which creates a clear present hazard to the public health and which requires
8144	immediate action to protect human health or safety, the executive director with the
8145	concurrence of the governor may order persons causing or contributing to the condition to
8146	reduce, discontinue, or ameliorate it to the extent that the public health hazard is eliminated.
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8148	[26-6b-1.] <u>26B-7-303.</u> Applicability [of chapter] Administrative procedures.
8149	(1) [This chapter applies] Sections 26B-7-304 through 26B-7-315 apply to
8150	involuntary examination, treatment, isolation, and quarantine actions applied to individuals or
8151	groups of individuals by the department or a local health department.
8152	(2) The provisions of [this chapter] Sections 26B-7-304 through 26B-7-315
8153	supersede the provisions of Title 63G, Chapter 4, Administrative Procedures Act.
8154	(3) The [Department of Health] department may adopt rules in accordance with Title
8155	63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the
8156	provisions of [this chapter] Sections 26B-7-304 through 26B-7-315.
8157	
2152	[26-6b-3-] 26R-7-304 Order of restriction

- (1) Subject to Subsection (5), the department <u>or a local health department</u> having jurisdiction over the location where an individual or a group of individuals who are subject to restriction are found may:
- (a) issue a written order of restriction for the individual or group of individuals

 pursuant to Section [26-1-30] 26B-1-202 or Subsection 26A-1-114(1)(b) upon compliance

 with the requirements of this [chapter] part; and
 - (b) issue a verbal order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).
 - (2) (a) A <u>department or local health</u> department's determination to issue an order of restriction shall be based upon the totality of circumstances reported to and known by the department or local health department, including:
- 8170 (i) observation;

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- 8171 (ii) information that the department <u>or local health department</u> determines is credible 8172 and reliable information; and
 - (iii) knowledge of current public health risks based on medically accepted guidelines as may be established by the [Department of Health] department by administrative rule.
- 8175 (b) An order of restriction issued by <u>the department or</u> a <u>local health</u> department 8176 shall:
 - (i) in the opinion of the public health official, be for the shortest reasonable period of time necessary to protect the public health;
 - (ii) use the least intrusive method of restriction that, in the opinion of the department or local health department, is reasonable based on the totality of circumstances known to the department or local health department issuing the order of restriction;
 - (iii) be in writing unless the provisions of Subsection (2)(c) apply; and
- 8183 (iv) contain notice of an individual's rights as required in Section [26-6b-3.3] 8184 26B-6-407.
 - (c) (i) [A] The department or a local health department may issue a verbal order of restriction, without prior notice to the individual or group of individuals if the delay in imposing a written order of restriction would significantly jeopardize the department or local health department's ability to prevent or limit:
- 8189 (A) the transmission of a communicable or possibly communicable disease that poses a threat to public health;

- 8191 (B) the transmission of an infectious agent or possibly infectious agent that poses a 8192 threat to public health;
- 8193 (C) the exposure or possible exposure of a chemical or biological agent that poses a 8194 threat to public health; or
 - (D) the exposure or transmission of a condition that poses a threat to public health.
 - (ii) A verbal order of restriction issued under [the provisions of] Subsection (2)(c)(i):
 - (A) is valid for 24 hours from the time the order of restriction is issued;
 - (B) may be verbally communicated to the individuals or group of individuals subject to restriction by a first responder;
 - (C) may be enforced by the first responder until the department <u>or local health</u> department is able to establish and maintain the place of restriction; and
 - (D) may only be continued beyond the initial 24 hours if a written order of restriction is issued pursuant to the provisions of Section [26-6b-3.3] 26B-7-307.
 - (3) Pending issuance of a written order of restriction under Section [26-6b-3.3] 26B-7-307, or judicial review of an order of restriction [by the district court pursuant to] under Section [26-6b-6] 26B-7-311, an individual who is subject to the order of restriction may be required to submit to involuntary examination, quarantine, isolation, or treatment in the individual's home, a hospital, or any other suitable facility under reasonable conditions prescribed by the department or local health department.
 - (4) The department <u>or local health department</u> that issued the order of restriction shall take reasonable measures, including the provision of medical care, as may be necessary to assure proper care related to the reason for the involuntary examination, treatment, isolation, or quarantine of an individual ordered to submit to an order of restriction.
 - (5) (a) The Legislature may at any time terminate by joint resolution an order of restriction issued by the department <u>or local health department</u> as described in this section in response to a declared public health emergency.
 - (b) A county governing body may at any time terminate by majority vote an order of restriction issued by the relevant local health department [as described in] under this section issued in response to a declared public health emergency.
- 8221 [26-6b-3.1.] 26B-7-305. Consent to order of restriction -- Periodic review.
- 8222 (1) (a) The department or a local health department shall either seek judicial review

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- of an order of restriction under Sections [26-6b-4] 26B-7-309 through [26-6b-6] 26B-7-311, or obtain the consent of an individual subject to an order of restriction.
- 8225 (b) If the department <u>or a local health department</u> obtains consent, the consent shall 8226 be in writing and shall inform the individual or group of individuals:
 - (i) of the terms and duration of the order of restriction;

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- 8228 (ii) of the importance of complying with the order of restriction to protect the public's 8229 health;
 - (iii) that each individual has the right to agree to the order of restriction, or refuse to agree to the order of restriction and seek a judicial review of the order of restriction;
 - (iv) that for any individual who consents to the order of restriction:
 - (A) the order of restriction will not be reviewed by the [district] court unless the individual withdraws consent to the order of restriction in accordance with Subsection (1)(b)(iv)(B); and
 - (B) the individual shall notify the department <u>or local health department</u> in writing, with at least five business day's notice, if the individual intends to withdraw consent to the order of restriction; and
- (v) that a breach of a consent agreement prior to the end of the order of restriction may subject the individual to an involuntary order of restriction under Section [26-6b-3.2] 26B-7-306.
 - (2) (a) The department <u>or local health department</u> responsible for the care of an individual who has consented to the order of restriction shall periodically reexamine the reasons upon which the order of restriction was based. This reexamination shall occur at least once every six months.
 - (b) (i) If at any time, the department <u>or local health department</u> determines that the conditions justifying the order of restriction for either a group or an individual no longer exist, the department <u>or local health department</u> shall immediately discharge the individual or group from the order of restriction.
 - (ii) If the department <u>or a local health department</u> determines that the conditions justifying the order of restriction continue to exist, the department <u>or local health department</u> shall send to the individual a written notice of:
- 8253 (A) the <u>department or local health</u> department's findings, the expected duration of the order of restriction, and the reason for the decision; and

8255	(B) the individual's right to a judicial review of the order of restriction by the [district]
8256	court if requested by the individual.

- (iii) Upon request for judicial review by an individual, the department <u>or local health</u> department shall:
- (A) file a petition [in district] with the court within five business days after the individual's request for a judicial review; and
- 8261 (B) proceed under Sections [26-6b-4] <u>26B-7-309</u> through [26-6b-6] <u>26B-7-311</u>.

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- [26-6b-3.2.] <u>26B-7-306.</u> Involuntary order of restriction -- Notice -- Effect of order during judicial review.
- (1) If the department <u>or local health department</u> cannot obtain consent to the order of restriction from an individual, or if an individual withdraws consent to an order under Subsection [26-6b-3.1] <u>26B-7-305</u> (1)(b)(iv)(B), the department <u>or local health department</u> shall:
- (a) give the individual or group of individuals subject to the order of restriction a written notice of:
 - (i) the order of restriction and any supporting documentation; and
 - (ii) the individual's right to a judicial review of the order of restriction; and
- 8273 (b) file a petition for a judicial review of the order of restriction under Section [26-6b-4] 8274 26B-7-309 in [district] court within:
 - (i) five business days after issuing the written notice of the order of restriction; or
 - (ii) if consent has been withdrawn under Subsection [26-6b-3.1] <u>26B-7-305</u> (1)(b)(iv)(B), within five business days after receiving notice of the individual's withdrawal of consent.
 - (2) (a) An order of restriction remains in effect during any judicial proceedings to review the order of restriction if the department or local health department files a petition for judicial review of the order of restriction [with the district] within the period of time required by this section.
 - (b) Law enforcement officers with jurisdiction in the area where the individual who is subject to the order of restriction can be located shall assist the department or local health department with enforcing the order of restriction.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

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8287	[26-6b-3.3.] <u>26B-7-307.</u> Contents of notice of order of restriction Rights of
8288	individuals.
8289	(1) A written order of restriction issued by a department or local health department
8290	shall include the following information:
8291	(a) the identity of the individual or a description of the group of individuals subject to
8292	the order of restriction;
8293	(b) the identity or location of any premises that may be subject to restriction;
8294	(c) the date and time for which the restriction begins and the expected duration of the
8295	restriction;
8296	(d) the suspected communicable disease, infectious, chemical or biological agent, or
8297	other condition that poses a threat to public health;
8298	(e) the requirements for termination of the order of restriction, such as necessary
8299	laboratory reports, the expiration of an incubation period, or the completion of treatment for
8300	the communicable disease;
8301	(f) any conditions on the restriction, such as limitation of visitors or requirements for
8302	medical monitoring;
8303	(g) the medical or scientific information upon which the restriction is based;
8304	(h) a statement advising of the right to a judicial review of the order of restriction by
8305	the [district] court; and
8306	(i) pursuant to Subsection (2), the rights of each individual subject to restriction.
8307	(2) An individual subject to restriction has the following rights:
8308	(a) the right to be represented by legal counsel in any judicial review of the order of
8309	restriction in accordance with Subsection [26-6b-4] <u>26B-7-309</u> (3);
8310	(b) the right to be provided with prior notice of the date, time, and location of any
8311	hearing concerning the order of restriction;
8312	(c) the right to participate in any hearing, in a manner established by the court based
8313	on precautions necessary to prevent additional exposure to communicable or possibly
8314	communicable diseases or to protect the public health;
8315	(d) the right to respond and present evidence and arguments on the individual's own
8316	behalf in any hearing;

(e) the right to cross examine witnesses; and

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(f) the right to review and copy all records in the possession of the department that

issued the order of restriction which relate to the subject of the written order of restriction.

- (3) (a) Notwithstanding the provisions of Subsection (1), if the department or a local health department issues an order of restriction for a group of individuals, the department or local health department may modify the method of providing notice to the group or modify the information contained in the notice, if the public health official determines the modification of the notice is necessary to:
 - (i) protect the privacy of medical information of individuals in the group; or
- (ii) provide notice to the group in a manner that will efficiently and effectively notify the individuals in the group within the period of time necessary to protect the public health.
- (b) When the department or a local health department modifies notice to a group of individuals under Subsection (3)(a), the department or local health department shall provide each individual in the group with notice that complies with the provisions of Subsection (1) as soon as reasonably practical.
- (4) (a) In addition to the rights of an individual described in Subsections (1) and (2). an individual subject to an order of restriction may not be terminated from employment if the reason for termination is based solely on the fact that the individual is or was subject to an order of restriction.
- (b) The department or local health department issuing the order of restriction shall give the individual subject to the order of restriction notice of the individual's employment rights under Subsection (4)(a).
- (c) An employer in the state, including an employer who is the state or a political subdivision of the state, may not violate the provisions of Subsection (4)(a).

[26-6b-3.4.] 26B-7-308. Medical records -- Privacy protections.

- (1) (a) Health care providers as defined in Section 78B-3-403, health care facilities licensed under [Title 26, Chapter 21] Chapter 2, Part 2, Health Care Facility Licensing and Inspection [Act], and governmental entities, shall, when requested, provide the public health official and the individual subject to an order of restriction, a copy of medical records that are relevant to the order of restriction.
- (b) The records requested under Subsection (1)(a) shall be provided as soon as reasonably possible after the request is submitted to the health care provider or health care facility, or as soon as reasonably possible after the health care provider or facility receives

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the results of any relevant diagnostic testing of the individual.

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- 8352 (2) (a) The production of records under the provisions of this section is for the benefit of the public health and safety of the citizens of the state. A health care provider or facility is 8353 8354 encouraged to provide copies of medical records or other records necessary to carry out the 8355 purpose of this [chapter] part free of charge.
 - (b) Notwithstanding the provisions of Subsection (2)(c), a health care facility that is a state governmental entity shall provide medical records or other records necessary to carry out the purposes of this [chapter] part, free of charge.
 - (c) If a health care provider or health care facility does not provide medical records free of charge under the provisions of Subsection (2)(a) or (b), the health care provider or facility may charge a fee for the records that does not exceed the presumed reasonable charges established for workers' compensation by administrative rule adopted by the Labor Commission.
- 8364 (3) Medical records held by a court related to orders of restriction under this [chapter] 8365 part shall be sealed by the [district] court at the conclusion of the case.

[26-6b-4.] 26B-7-309. Judicial review [by the district court] -- Required notice --Representation by counsel -- Conduct of proceedings.

- (1) The provisions of this section and Sections [26-6b-5] 26B-7-310 through [26-6b-7] 26B-7-312 apply if the department or a local health department issues an order for restriction, and:
- (a) an individual subject to the order of restriction refuses to consent to the order of restriction;
- (b) an individual subject to an order of restriction has withdrawn consent to an order of restriction under the provisions of Subsection [26-6b-3.1] 26B-7-305 (1)(b)(iv)(B); or
- (c) the department or local health department chooses to not attempt to obtain consent to an order of restriction and files an action for judicial review of the order of restriction.
- (2) (a) If the individual who is subject to an order of restriction is in custody, the department or local health department, which is the petitioner, shall provide to the individual written notice of the petition for judicial review of the order of restriction and hearings held pursuant to Sections [26-6b-5] 26B-7-310 through [26-6b-7] 26B-7-312 as soon as

practicable, and shall send the notice to the legal guardian, legal counsel for the parties involved, and any other persons and immediate adult family members whom the individual or the [district] court designates.

- <u>(b)</u> The notice <u>described in Subsection (2)(b)</u> shall advise these persons that a hearing may be held within the time provided by this [chapter] <u>part</u>.
- [(b)] (c) If the individual has refused to permit release of information necessary for the provision of notice under this Subsection (2), the extent of notice shall be determined by the [district] court.
- (c) Notwithstanding the notice requirement in Subsection (2)(a), if the court determines that written notice to each individual in a group of individuals subject to an order of restriction is not practical considering the circumstances of the threat to public health, the court may order the department to provide notice to the individual or group of individuals in a manner determined by the court.
- (3) (a) If the individual who is subject to an order of restriction is in custody, he shall be afforded an opportunity to be represented by counsel. If neither the individual nor others provide for counsel, the [district] court shall appoint counsel and allow counsel sufficient time to consult with the individual prior to the hearing. If the individual is indigent, the payment of reasonable attorney fees for counsel, as determined by the [district] court, shall be made by the county in which the individual resides or was found.
- (b) The parties may appear at the hearings, to testify, and to present and cross-examine witnesses. The [district] court may, in its discretion, receive the testimony of any other individual.
- (c) The [district] court may allow a waiver of the individual's right to appear only for good cause shown, and that cause shall be made a part of the court record.
- (d) The [district] court may order that the individual participate in the hearing by telephonic or other electronic means if the individual's condition poses a health threat to those who physically attend the hearing or to others if the individual is transported to the court.
- (4) The [district] court may, in its discretion, order that the individual be moved to a more appropriate treatment, quarantine, or isolation facility outside of its jurisdiction, and may transfer the proceedings to any other [district] court within this state where venue is proper, provided that the transfer will not be adverse to the legal interests of the individual.

- (5) All persons to whom notice is required to be given may attend the hearings. The [district] court may exclude from the hearing all persons not necessary for the conduct of the proceedings.
 - (6) All hearings shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the health of the individual or others required to participate in the hearing.
 - (7) The [district] court shall receive all relevant and material evidence which is offered, subject to Utah Rules of Evidence.
 - (8) The [district] court may order law enforcement to assist the petitioner in locating the individuals subject to restriction and enforcing the order of restriction.

[26-6b-5.] <u>26B-7-310.</u> Petition for judicial review of order of restriction -- Court-ordered examination period.

- (1) (a) A department may petition for a judicial review of the department's order of restriction for an individual or group of individuals who are subject to restriction by filing a written petition with the [district] court of the county in which the individual or group of individuals reside or are located.
- (b) (i) The county attorney for the county where the individual or group of individuals reside or are located shall represent the local health department in any proceedings under this [chapter] part.
- (ii) The Office of the Attorney General shall represent the department when the petitioner is the [Department of Health] department in any proceedings under this [chapter] part .
 - (2) The petition under Subsection (1) shall be accompanied by:
 - (a) written affidavit of the department stating:
 - (i) a belief the individual or group of individuals are subject to restriction;
- (ii) a belief that the individual or group of individuals who are subject to restriction are likely to fail to submit to examination, treatment, quarantine, or isolation if not immediately restrained;
 - (iii) this failure would pose a threat to the public health; and
- 8445 (iv) the personal knowledge of the individual's or group of individuals' condition or the 8446 circumstances that lead to that belief; and

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- (b) a written statement by a licensed physician or physician assistant indicating the physician or physician assistant finds the individual or group of individuals are subject to restriction.
 - (3) The court shall issue an order of restriction requiring the individual or group of individuals to submit to involuntary restriction to protect the public health if the [district] court finds:
 - (a) there is a reasonable basis to believe that the individual's or group of individuals' condition requires involuntary examination, quarantine, treatment, or isolation pending examination and hearing; or
 - (b) the individual or group of individuals have refused to submit to examination by a health professional as directed by the department or to voluntarily submit to examination, treatment, quarantine, or isolation.
 - (4) If the individual or group of individuals who are subject to restriction are not in custody, the court may make its determination and issue its order of restriction in an ex parte hearing.
 - (5) At least 24 hours prior to the hearing required by Section [26-6b-6] 26B-7-311, the department which is the petitioner, shall report to the court, in writing, the opinion of qualified health care providers:
 - (a) regarding whether the individual or group of individuals are infected by or contaminated with:
 - (i) a communicable or possible communicable disease that poses a threat to public health;
- 8469 (ii) an infectious agent or possibly infectious agent that poses a threat to public 8470 health;
 - (iii) a chemical or biological agent that poses a threat to public health; or
 - (iv) a condition that poses a threat to public health;
- 8473 (b) that despite the exercise of reasonable diligence, the diagnostic studies have not 8474 been completed;
 - (c) whether the individual or group of individuals have agreed to voluntarily comply with necessary examination, treatment, quarantine, or isolation; and
- 8477 (d) whether the petitioner believes the individual or group of individuals will comply without court proceedings.

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[26-6b-6.] <u>26B-7-311.</u> Court determination for an order of restriction after examination period.

- (1) The [district] court shall set a hearing regarding the involuntary order of restriction of an individual or group of individuals, to be held within 10 business days of the issuance of its order of restriction issued pursuant to Section [26-6b-5] 26B-7-310, unless the petitioner informs the [district] court prior to this hearing that the individual or group of individuals:
 - (a) are not subject to restriction; or

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- (b) have stipulated to the issuance of an order of restriction.
- (2) If the individual or an individual in a group of individuals has stipulated to the issuance of an order of restriction, the court may issue an order as provided in Subsection (6) for those individuals without further hearing.
- (3) (a) If the examination report required in Section [26-6b-5] 26B-7-310 proves the individual or group of individuals are not subject to restriction, the court may without further hearing terminate the proceedings and dismiss the petition.
- (b) The court may, after a hearing at which the individual or group of individuals are present in person or by telephonic or other electronic means and have had the opportunity to be represented by counsel, extend its order of restriction for a reasonable period, not to exceed 90 days, if the court has reason to believe the individual or group of individuals are infected by or contaminated with:
- (i) a communicable or possibly communicable disease that poses a threat to public health:
- (ii) an infectious agent or possibly infectious agent that poses a threat to public health;
 - (iii) a chemical or biological agent that poses a threat to public health; or
- (iv) a condition that poses a threat to public health, but, despite the exercise of reasonable diligence the diagnostic studies have not been completed.
- (4) The petitioner shall, at the time of the hearing, provide the [district] court with the following items, to the extent that they have been issued or are otherwise available:
 - (a) the order of restriction issued by the petitioner;
 - (b) admission notes if any individual was hospitalized; and
 - (c) medical records pertaining to the current order of restriction.
 - (5) The information provided to the court under Subsection (4) shall also be provided

8511 to the individual's or group of individual's counsel at the time of the hearing, and at any time 8512 prior to the hearing upon request of counsel.

- (6) (a) The [district] court shall order the individual and each individual in a group of individuals to submit to the order of restriction if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:
- (i) the individual or group of individuals are infected with a communicable disease or infectious agent, are contaminated with a chemical or biological agent, or are in a condition that poses a threat to public health;
- (ii) there is no appropriate and less restrictive alternative to a court order of examination, quarantine, isolation, and treatment, or any of them;
- (iii) the petitioner can provide the individual or group of individuals with treatment that 8521 8522 is adequate and appropriate to the individual's or group of individuals' conditions and needs; 8523 and
 - (iv) it is in the public interest to order the individual or group of individuals to submit to involuntary examination, quarantine, isolation, and treatment, or any of them after weighing the following factors:
 - (A) the personal or religious beliefs, if any, of the individual that are opposed to medical examination or treatment;
 - (B) the ability of the department to control the public health threat with treatment alternatives that are requested by the individual;
 - (C) the economic impact for the department if the individual is permitted to use an alternative to the treatment recommended by the department; and
 - (D) other relevant factors as determined by the court.
 - (b) If upon completion of the hearing the court does not find all of the conditions listed in Subsection (6)(a) exist, the court shall immediately dismiss the petition.
 - (7) The order of restriction shall designate the period, subject to Subsection (8), for which the individual or group of individuals shall be examined, treated, isolated, or quarantined.
- 8539 (8) (a) The order of restriction may not exceed six months without benefit of a [district] 8540 court review hearing.
- (b) (i) The [district] court review hearing shall be held prior to the expiration of the 8541 8542 order of restriction issued under Subsection (7).

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8543	(ii) At the review hearing the court may issue an order of restriction for up to an
8544	indeterminate period, if the [district] court enters a written finding in the record determining by
8545	clear and convincing evidence that the required conditions in Subsection (6) will continue for
8546	an indeterminate period.
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8548	[26-6b-7.] <u>26B-7-312.</u> Periodic review of individuals under court order.
8549	(1) (a) At least two weeks prior to the expiration of the designated period of any court
8550	order still in effect, the petitioner shall inform the court that issued the order that the order is
8551	about to expire.
8552	(b) The petitioner shall immediately reexamine the reasons upon which the court's
8553	order was based.
8554	(c) If the petitioner determines that the conditions justifying that order no longer exist,
8555	[it] the petitioner shall discharge the individual from involuntary quarantine, isolation, or
8556	treatment and report its action to the court for a termination of the order.
8557	(d) [Otherwise] If the conditions justifying the order still exist, the court shall
8558	schedule a hearing prior to the expiration of [its] the court's order and proceed under
8559	Sections [26-6b-4] <u>26B-7-309</u> through [26-6b-6] <u>26B-7-311</u> .
8560	(2) (a) The petitioner responsible for the care of an individual under a court order of
8561	involuntary quarantine, isolation, or treatment for an indeterminate period shall at six-month
8562	intervals reexamine the reasons upon which the order of indeterminate duration was based.
8563	(b) If the petitioner determines that the conditions justifying that the court's order no
8564	longer exist, the petitioner shall discharge the individual from involuntary quarantine,
8565	isolation, or treatment and immediately report its action to the court for a termination of the
8566	order.
8567	(c) If the petitioner determines that the conditions justifying the involuntary
8568	quarantine, isolation, or treatment continue to exist, the petitioner shall send a written report
8569	of those findings to the court.
8570	(d) The petitioner shall notify the individual and his counsel of record in writing that
8571	the involuntary quarantine, isolation, or treatment will be continued, the reasons for that
8572	decision, and that the individual has the right to a review hearing by making a request to the

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court.

(d) Upon receiving the request for a review, the court shall immediately set a hearing

date and proceed under Sections	[26-6b-4]	26B-6-309	through [26-6b-6]	26B-6-311
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[26-6b-8.] <u>26B-7-313.</u> Transportation of individuals subject to temporary or court-ordered restriction.

Transportation of an individual subject to an order of restriction to court, or to a place for examination, quarantine, isolation, or treatment pursuant a temporary order issued by a department <u>or local health department</u>, or pursuant to a court order, shall be conducted by the county sheriff where the individual is located.

[26-6b-9.] <u>26B-7-314.</u> Examination, quarantine, isolation, and treatment costs.

If a local health department obtains approval from the [Department of Health] department, the costs that the local health department would otherwise have to bear for examination, quarantine, isolation, and treatment ordered under the provisions of this [chapter] part shall be paid by the [Department of Health] department to the extent that the individual is unable to pay and that other sources and insurance do not pay.

[26-6b-10.] <u>26B-7-315.</u> Severability.

[If any provision of this chapter,] With respect to Sections 26B-7-404 through 26B-7-414, if the provisions or the application of [this chapter] the provisions to any person or circumstance[,] is found to be unconstitutional, the provision that is found to be unconstitutional is severable and the balance of [this chapter remains] any sections not found to be unconstitutional remain effective, notwithstanding [that unconstitutionality] those sections found to be unconstitutional.

[26-23b-103.] <u>26B-7-316.</u> Mandatory reporting requirements -- Contents of reports -- Penalties.

- (1) (a) A health care provider shall report to the department any case of any person who the provider knows has a confirmed case of, or who the provider believes in his professional judgment is sufficiently likely to harbor any illness or health condition that may be caused by:
 - (i) bioterrorism;
 - (ii) epidemic or pandemic disease; or

- (iii) novel and highly fatal infectious agents or biological toxins which might pose a 8607 8608 substantial risk of a significant number of human fatalities or incidences of permanent or long-term disability. 8609 8610 (b) A health care provider shall immediately submit the report required by Subsection 8611 (1)(a) within 24 hours of concluding that a report is required under Subsection (1)(a). 8612 (2) (a) A report required by this section shall be submitted electronically, verbally, or in 8613 writing to the department or appropriate local health department. 8614 (b) A report submitted pursuant to Subsection (1) shall include, if known: 8615 (i) diagnostic information on the specific illness or health condition that is the subject 8616 of the report, and, if transmitted electronically, diagnostic codes assigned to the visit; (ii) the patient's name, date of birth, sex, race, occupation, and current home and 8617 8618 work address and phone number; 8619 (iii) the name, address, and phone number of the health care provider; and 8620 (iv) the name, address, and phone number of the reporting individual. 8621 (3) The department may impose a sanction against a health care provider for failure 8622 to make a report required by this section only if the department can show by clear and 8623 convincing evidence that a health care provider willfully failed to file a report. 8624 [26-23b-104.] <u>26B-7-317.</u> Authorization to report -- Declaration of a public 8625 8626 health emergency -- Termination of a public health emergency -- Order of constraint. 8627 (1) A health care provider is authorized to report to the department any case of a 8628 reportable emergency illness or health condition in any person when: 8629 (a) the health care provider knows of a confirmed case; or (b) the health care provider believes, based on the health care provider's professional 8630 8631 judgment that a person likely harbors a reportable emergency illness or health condition. 8632 (2) A report [pursuant to] under this section shall include, if known: 8633 (a) the name of the facility submitting the report; 8634 (b) a patient identifier that allows linkage with the patient's record for follow-up
- 8636 (c) the date and time of visit;

investigation if needed;

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- (d) the patient's age and sex;
- (e) the zip code of the patient's residence;

- (f) the reportable illness or condition detected or suspected; 8639
 - (g) diagnostic information and, if available, diagnostic codes assigned to the visit; and
- (h) whether the patient was admitted to the hospital. 8641
- 8642 (3) (a) Subject to Subsections (3)(b) and (4), if the department determines that a 8643 public health emergency exists, the department may, with the concurrence of the governor 8644 and the executive director or in the absence of the executive director, the executive director's 8645 designee, declare a public health emergency, issue an order of constraint, and mandate reporting under this section for a limited reasonable period of time, as necessary to respond 8646 8647 to the public health emergency.
 - (b) (i) During a public health emergency that has been in effect for more than 30 days, the department may not issue an order of constraint until the department has provided notice of the proposed action to the legislative emergency response committee no later than 24 hours before the department issues the order of constraint.
 - (ii) The department:

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- 8653 (A) shall provide the notice required by Subsection (3)(b)(i) using the best available 8654 method under the circumstances as determined by the executive director;
 - (B) may provide the notice required by Subsection (3)(b)(i) in electronic format; and
 - (C) shall provide the notice in written form, if practicable.
- 8657 (c) The department may not mandate reporting under this subsection for more than 8658 90 days.
 - (4) (a) Except as provided in Subsection (4)(b), a public health emergency declared by the department as described in Subsection (3) expires at the earliest of:
 - (i) the day on which the department or the governor finds that the threat or danger has passed or the public health emergency reduced to the extent that emergency conditions no longer exist;
 - (ii) 30 days after the date on which the department declared the public health emergency; or
 - (iii) the day on which the public health emergency is terminated by a joint resolution of the Legislature.
- (b) (i) The Legislature, by joint resolution, may extend a public health emergency for a 8668 8669 time period designated in the joint resolution.
 - (ii) If the Legislature extends a public health emergency as described in Subsection

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- 8671 (4)(b)(i), the public health emergency expires on the date designated by the Legislature.
- (c) Except as provided in Subsection (4)(d), if a public health emergency declared by the department expires as described in Subsection (4)(a) or (b), the department may not declare a public health emergency for the same illness or occurrence that precipitated the previous public health emergency declaration.
 - (d) (i) Notwithstanding Subsection (4)(c), subject to Subsection (4)(e), if the department finds that exigent circumstances exist, after providing notice to the Legislature, the department may declare a new public health emergency for the same illness or occurrence that precipitated a previous public health emergency declaration.
 - (ii) A public health emergency declared as described in Subsection (4)(d)(i) expires in accordance with Subsection (4)(a) or (b).
 - (e) If the Legislature terminates a public health emergency declared due to exigent circumstances as described in Subsection (4)(d)(i), the department may not declare a new public health emergency for the same illness, occurrence, or exigent circumstances.
 - (5) During a declared public health emergency declared under this title:
 - (a) the Legislature may:

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- (i) at any time by joint resolution terminate an order of constraint issued by the department; or
- (ii) by joint resolution terminate an order of constraint issued by a local health department in response to a public health emergency that has been in effect for more than 30 days; and
- (b) a county legislative body may at any time terminate an order of constraint issued by a local health department in response to a declared public health emergency.
- (6) (a) (i) If the department declares a public health emergency as described in this [chapter] part, and the department finds that the public health emergency conditions warrant an extension of the public health emergency beyond the 30-day term or another date designated by the Legislature as described in this section, the department shall provide written notice to the speaker of the House of Representatives and the president of the Senate at least 10 days before the expiration of the public health emergency.
- (ii) If a local health department declares a public health emergency as described in this [chapter] part, and the local health department finds that the public health emergency conditions warrant an extension of the public health emergency beyond the 30-day term or

another date designated by the county governing body as described in this section, the local health department shall provide written notice to the county governing body at least 10 days before the expiration of the public health emergency.

- (b) If the department provides notice as described in Subsection (6)(a)(i) for a public health emergency within the first 30 days from the initial declaration of the public health emergency, the speaker of the House of Representatives and the president of the Senate:
- (i) shall poll the members of their respective bodies to determine whether the Legislature will extend the public health emergency; and
 - (ii) may jointly convene the committee created in Section 53-2a-218.
- (c) If the department provides notice as described in Subsection (6)(a)(i) for a public health emergency that has been extended beyond the 30 days from the initial declaration of the public health emergency, the speaker of the House of Representatives and the president of the Senate shall jointly convene the committee created in Section 53-2a-218.
- (7) If the committee created in Section 53-2a-218 is convened as described in Subsection (6), the committee shall conduct a public meeting to:
- (a) discuss the nature of the public health emergency and conditions of the public health emergency;
 - (b) evaluate options for public health emergency response;
- (c) receive testimony from individuals with expertise relevant to the current public health emergency;
 - (d) receive testimony from members of the public; and
 - (e) provide a recommendation to the Legislature whether to extend the public health emergency by joint resolution.
 - (8) (a) During a public health emergency declared as described in this title:
 - (i) the department or a local health department may not impose an order of constraint on a religious gathering that is more restrictive than an order of constraint that applies to any other relevantly similar gathering; and
 - (ii) an individual, while acting or purporting to act within the course and scope of the individual's official department or local health department capacity, may not:
 - (A) prevent a religious gathering that is held in a manner consistent with any order of constraint issued pursuant to this title; or
 - (B) impose a penalty for a previous religious gathering that was held in a manner

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consistent with any order of constraint issued pursuant to this title.

- (b) Upon proper grounds, a court of competent jurisdiction may grant an injunction to prevent the violation of this Subsection (8).
- (c) During a public health emergency declared [as described] in _accordance with this title, the department or a local health department [shall] _may not issue a public health order or impose or implement a regulation that substantially burdens an individual's exercise of religion unless the department or local health department demonstrates that the application of the burden to the individual:
 - (i) is in furtherance of a compelling government interest; and
 - (ii) is the least restrictive means of furthering that compelling government interest.
- (d) Notwithstanding Subsections (8)(a) and (c), the department or a local health department shall allow reasonable accommodations for an individual to perform or participate in a religious practice or rite.
- (9) (a) Unless the provisions of Subsection (3) apply, a health care provider is not subject to penalties for failing to submit a report under this section.
- (b) If the provisions of Subsection (3) apply, a health care provider is subject to the penalties of Subsection [26-23b-103] <u>26B-7-415</u> (3) for failure to make a report under this section.

[26-23b-105.] <u>26B-7-318.</u> Pharmacy reporting requirements.

- (1) Notwithstanding the provisions of Subsection [26-23b-103] <u>26B-7-315</u> (1)(a), a pharmacist shall report unusual drug-related events as described in Subsection (2).
 - (2) Unusual drug-related events that require a report include:
 - (a) an unusual increase in the number of prescriptions filled for antimicrobials;
- (b) any prescription that treats a disease that has bioterrorism potential if that prescription is unusual or in excess of the expected frequency; and
- (c) an unusual increase in the number of requests for information about or sales of over-the-counter pharmaceuticals to treat conditions which may suggest the presence of one of the illnesses or conditions described in Section [26-23b-103] 26B-7-315 or [26-23b-104] 26B-7-316 and which are designated by department rule.
- (3) (a) A pharmacist shall submit the report required by this section within 24 hours after the pharmacist suspects, in his professional judgement, that an unusual drug-related

event has occurred. 8767

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- 8768 (b) If a pharmacy is part of a health care facility subject to the reporting requirements of this [chapter] part, the pharmacist in charge shall make the report under this section on 8769 8770 behalf of the health care facility.
 - (4) (a) The report required by this section shall be submitted in accordance with Subsection [26-23b-103] 26B-7-315 (2)(a).
 - (b) A report shall include the name and location of the reporting pharmacist, the name and type of pharmaceuticals that are the subject of the unusual increase in use, and if known, the suspected illness or health condition that is the subject of the report.
- 8776 (5) A pharmacist is subject to the penalties under Subsection [26-23b-103] 26B-7-315 (3) for failing to make a report required by this section. 8777

[26-23b-106.] 26B-7-319. Medical laboratory reporting requirements.

- (1) Notwithstanding the provisions of Subsection [26-23b-103] 26B-7-315 (1), the director of a medical laboratory located in this state is responsible for reporting results of a laboratory test that confirm a condition or illness described in Subsection [26-23b-103] 26B-7-315 (1) within 24 hours after obtaining the results of the test. This reporting requirement also applies to results obtained on specimens sent to an out-of-state laboratory for analysis.
- (2) The director of a medical laboratory located outside this state that receives a specimen obtained inside this state is responsible for reporting the results of any test that confirm a condition or illness described in Subsection [26-23b-103] 26B-7-315 (1), within 24 hours of obtaining the results, provided that the laboratory that performs the test has agreed to the reporting requirements of this state.
- (3) If a medical laboratory is part of a health care facility subject to the reporting requirements of this [chapter] part, the director of the medical laboratory shall make the report required by this section on behalf of the health care facility.
- (4) The report required by this section shall be submitted in accordance with Subsection [26-23b-103] 26B-7-315 (2).
- (5) The director of a medical laboratory is subject to the penalties of Subsection [26-23b-103] 26B-7-315 (3) for failing to make a report required by this section.

8799	[26-23b-107.] <u>26B-7-320.</u> Exemptions from liability.
8800	(1) A health care provider may not be discharged, suspended, disciplined, or
8801	harassed for making a report [pursuant to this chapter] under Sections 26B-7-316 through
8802	<u>26B-7-323</u> .
8803	(2) A health care provider may not incur any civil or criminal liability as a result of
8804	making any report under [this chapter] Sections 26B-7-316 through 26B-7-323 so long as
8805	the report is made in good faith.
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8807	[26-23b-108.] <u>26B-7-321.</u> Investigation of suspected bioterrorism and diseases
8808	Termination of orders of constraint.
8809	(1) Subject to Subsection (6), the department shall:
8810	(a) ascertain the existence of cases of an illness or condition caused by the factors
8811	described in Subsections [26-23b-103] <u>26B-7-315</u> (1) and [26-23b-104] <u>26B-7-316</u> (1);
8812	(b) investigate all such cases for sources of infection or exposure;
8813	(c) ensure that any cases, suspected cases, and exposed persons are subject to
8814	proper control measures; and
8815	(d) define the distribution of the suspected illness or health condition.
8816	(2) (a) Acting on information received from the reports required by this [chapter]
8817	Sections 26B-7-316 through 26B-7-320, or other reliable information, the department shall
8818	identify all individuals thought to have been exposed to an illness or condition described in
8819	Subsection [26-23b-103] <u>26B-7-315</u> (1).
8820	(b) The department may request information from a health care provider concerning
8821	an individual's identifying information as described in Subsection [26-23b-103] <u>26B-7-315</u>
8822	(2)(b) when:
8823	(i) the department is investigating a potential illness or condition described in
8824	Subsection [26-23b-103] <u>26B-7-315</u> (1) and the health care provider has not submitted a

(ii) the department has received a report from a pharmacist under Section [26-23b-105] 26B-7-317, a medical laboratory under Section [26-23b-106] 26B-7-318, or another health care provider under Subsection [26-23b-104] 26B-7-316 (1) and the department believes that further investigation is necessary to protect the public health.

report to the department with the information requested; or

(c) A health care provider shall submit the information requested under this section to

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8831	the depa	rtment within 24 hours after receiving a request from the department.
8832	(3) The department shall counsel and interview identified individuals as appropriate
8833	to:	
8834	(a) assist in the positive identification of other cases and exposed individuals:

- (a) assist in the positive identification of other cases and exposed individuals:
- 8835 (b) develop information relating to the source and spread of the illness or condition; 8836 and
 - (c) obtain the names, addresses, phone numbers, or other identifying information of any other person from whom the illness or health condition may have been contracted and to whom the illness or condition may have spread.
 - (4) The department shall, for examination purposes, close, evacuate, or decontaminate any facility when the department reasonably believes that such facility or material may endanger the public health due to a condition or illness described in Subsection [26-23b-103] 26B-7-315 (1).
 - (5) The department [will] shall destroy personally identifying health information about an individual collected by the department as a result of a report under [this chapter] Sections 26B-7-316 through 26B-7-320 upon the earlier of:
 - (a) the department's determination that the information is no longer necessary to carry out an investigation under this [chapter] part; or
 - (b) 180 days after the information is collected.
 - (6) (a) The Legislature may at any time terminate by joint resolution an order of constraint issued by the department in response to a declared public health emergency.
 - (b) A county governing body may at any time terminate by majority vote an order of constraint issued by the relevant local health department in response to a declared public health emergency.

[26-23b-109.] 26B-7-322. Enforcement.

The department may enforce the provisions of [this chapter] Sections 26B-7-316 through 26B-7-321 in accordance with existing enforcement laws and regulations.

[26-23b-110.] 26B-7-323. Information sharing with public safety authorities.

(1) [For purposes of] As used in this section, "public safety authority" means a local, state, or federal law enforcement authority including the Division of Emergency Management,

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8863	emergency medical services personnel, and firefighters.
8864	(2) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records
8865	Access and Management Act
8866	(a) whenever a public safety authority suspects a case of a reportable illness or
8867	condition under the provisions of this [chapter, it] part, the public safety authority shall
8868	immediately notify the department;
8869	(b) whenever the department learns of a case of a reportable illness or condition
8870	under this [chapter] part that [it] the department reasonably believes has the potential to be
8871	caused by one of the factors listed in Subsection [26-23b-103] <u>26B-7-315</u> (1), [it] the
8872	department shall immediately notify the appropriate public safety authority; and
8873	(c) sharing of information reportable under [the provisions of this chapter] this part
8874	between persons authorized by this [chapter] part shall be limited to information necessary
8875	for the treatment, control, investigation, and prevention of a public health emergency.
8876	[(3) Except to the extent inconsistent with this chapter, Sections 26-6-27 and 26-6-28
8877	apply to this chapter.]
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8879	26B-7-324. Applicability of confidentiality provisions.
8880	The provisions of Sections 26B-7-317 and 26B-7-318 apply to information collected
8881	under Sections 26B-7-416 through 26B-7-423 except to the extent that application of a
8882	provision in Sections 26B-7-317 or 26B-7-318 is inconsistent with this part.
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8884	Part 4. General Sanitation and Food Safety.
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8886	[26-15a-102.] <u>26B-7-401.</u> Definitions.
8887	As used in this part:
8888	(1) "Agricultural tourism activity" means the same as that term is defined in Section
8889	78B-4-512.
8890	(2) "Agritourism" means the same as that term is defined in Section 78B-4-512.
8891	(3) "Agritourism food establishment" means a non-commercial kitchen facility where
8892	food is handled, stored, or prepared to be offered for sale on a farm in connection with an

agricultural tourism activity.

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(4) "Agritourism food establishment permit" means a permit issued by a local health

8895	department to the operator for the purpose of operating an agritourism food establishment.
8896	[(1)] (5) "Back country food service establishment" means a federal or state licensed
8897	back country guiding or outfitting business that:
8898	(a) provides food services; and
8899	(b) meets department recognized federal or state food service safety regulations for
8900	food handlers.
8901	[(2)] <u>(6)</u> "Certified food safety manager" means a manager of a food service
8902	establishment who:
8903	(a) passes successfully a department-approved examination;
8904	(b) successfully completes, every three years, renewal requirements established by
8905	department rule consistent with original certification requirements; and
8906	(c) submits to the appropriate local health department the documentation required by
8907	Section 26-15a-106.
8908	(7) "Farm" means a working farm, ranch, or other commercial agricultural,
8909	aquacultural, horticultural, or forestry operation.
8910	(8) "Food" means:
8911	(a) a raw, cooked, or processed edible substance, ice, nonalcoholic beverage, or
8912	ingredient used or intended for use or for sale, in whole or in part, for human consumption; or
8913	(b) chewing gum.
8914	[(3)] (9) "Food service establishment" means any place or area within a business or
8915	organization where potentially hazardous foods , as defined by the department under
8916	Section 26B-7-402, are prepared and intended for individual portion service and
8917	consumption by the general public, whether the consumption is on or off the premises, and
8918	whether or not a fee is charged for the food.
8919	[(4) "Local health department" means a local health department as defined in
8920	Subsection 26A-1-102(5).]
8921	[(5) "Potentially hazardous foods" shall be defined by the department by
8922	administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative
8923	Rulemaking Act.]
8924	(10) (a) "Microenterprise home kitchen" means a non-commercial kitchen facility
8925	located in a private home and operated by a resident of the home where ready-to-eat food is
8926	handled, stored, prepared, or offered for sale.

8927	(b) "Microenterprise home kitchen" does not include:
8928	(i) a catering operation;
8929	(ii) a cottage food operation;
8930	(iii) a food truck;
8931	(iv) an agritourism food establishment;
8932	(v) a bed and breakfast; or
8933	(vi) a residence-based group care facility.
8934	(11) "Microenterprise home kitchen permit" means a permit issued by a local health
8935	department to the operator for the purpose of operating a microenterprise home kitchen.
8936	(12) "Ready-to-eat" means:
8937	(a) raw animal food that is cooked;
8938	(b) raw fruits and vegetables that are washed;
8939	(c) fruits and vegetables that are cooked for hot holding;
8940	(d) a time or temperature control food that is cooked to the temperature and time
8941	required for the specific food in accordance with rules made by the department in
8942	accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
8943	(e) a bakery item for which further cooking is not required for food safety.
8944	(13) "Time or temperature control food" means food that requires time or temperature
8945	controls for safety to limit pathogenic microorganism growth or toxin formation.
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8947	[26-15-2.] <u>26B-7-402.</u> Minimum rules of sanitation established by department.
8948	The department shall establish and enforce, or provide for the enforcement of
8949	minimum rules of sanitation necessary to protect the public health. Such rules shall include,
8950	but not be limited to, rules necessary for the design, construction, operation, maintenance, or
8951	expansion of:
8952	(1) restaurants and all places where food or drink is handled, sold or served to the
8953	public;
8954	(2) public swimming pools;
8955	(3) public baths including saunas, spas, massage parlors, and suntan parlors;
8956	(4) public bathing beaches;
8957	(5) schools which are publicly or privately owned or operated;
8958	(6) recreational resorts, camps, and vehicle parks;

8959	(7) amusement parks and all other centers and places used for public gatherings;
8960	(8) mobile home parks and highway rest stops;
8961	(9) construction or labor camps;
8962	(10) jails, prisons and other places of incarceration or confinement;
8963	(11) hotels and motels;
8964	(12) lodging houses and boarding houses;
8965	(13) service stations;
8966	(14) barbershops and beauty shops, including a facility in which one or more
8967	individuals are engaged in:
8968	(a) any of the practices licensed under Title 58, Chapter 11a, Cosmetology and
8969	Associated Professions Licensing Act; or
8970	(b) styling hair in accordance with the exemption from licensure described in Section
8971	58-11a-304(13);
8972	(15) physician and dentist offices;
8973	(16) public buildings and grounds;
8974	(17) public conveyances and terminals; and
8975	(18) commercial tanning facilities.
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8977	[26-15-3.] <u>26B-7-403.</u> Department to advise regarding the plumbing code.
8978	(1) The department shall advise the Division of Professional Licensing and the
8979	Uniform Building Code Commission with respect to the adoption of a state construction code
8980	under Section 15A-1-204, including providing recommendations as to:
8981	(a) a specific edition of a plumbing code issued by a nationally recognized code
8982	authority; and
8983	(b) any amendments to a nationally recognized code.
8984	(2) The department may enforce the plumbing code adopted under Section
8985	15A-1-204.
8986	(3) Section 58-56-9 does not apply to health inspectors acting under this section.
8987	
8988	[26-15-4.] <u>26B-7-404.</u> Rules for wastewater disposal systems.
8989	The department shall establish rules necessary to protect the public health for the
8990	design, and construction, operation and maintenance of individual wastewater disposal

8991	systems.
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8993	[26-15-7.] <u>26B-7-405.</u> Rules for controlling vector-borne diseases and pests.
8994	(1) As used in this section:
8995	(a) "Pest" means a noxious, destructive, or troublesome organism whether plant or
8996	animal, when found in and around places of human occupancy, habitation, or use which
8997	threatens the public health or well being of the people within the state.
8998	(b) "Vector" means any organism, such as insects or rodents, that transmits a
8999	pathogen that can affect public health.
9000	(2) The department shall adopt rules to provide for the protection of the public health
9001	by controlling or preventing the spread of vector-borne diseases and infections and to control
9002	or reduce pests by the elimination of insanitary conditions which may include but not be
9003	limited to breeding areas, shelter, harborage or sources of food associated with such
9004	diseases or pests.
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9006	[26-15-8.] <u>26B-7-406.</u> Periodic evaluation of local health sanitation programs
9007	Minimum statewide enforcement standards Technical assistance.
9008	(1) The department shall periodically evaluate the sanitation programs of local health
9009	departments to determine the levels of sanitation being maintained throughout the state.
9010	(2) (a) The department shall ensure that each local health department's enforcement
9011	of the minimum rules of sanitation adopted under Section 26-15-2 for restaurants and other
9012	places where food or drink is handled meets or exceeds minimum statewide enforcement
9013	standards established by the department by administrative rule.
9014	(b) Administrative rules adopted under Subsection (2)(a) shall include at least:
9015	(i) the minimum number of periodic on-site inspections that shall be conducted by
9016	each local health department;
9017	(ii) criteria for conducting additional inspections; and
9018	(iii) standardized methods to be used by local health departments to assess
9019	compliance with the minimum rules of sanitation adopted under Section 26-15-2.
9020	(c) The department shall help local health departments comply with the minimum
9021	statewide enforcement standards adopted under this Subsection (2) by providing technical

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assistance.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

	WORKING BRALL TOR DISCOSSION FOR COLO CIVET
9023	[26-15-13.] <u>26B-7-407.</u> Regulation of tanning facilities.
9024	(1) For purposes of this section:
9025	(a) "Minor" means [a person under 18 years of age] an individual who is younger
9026	than 18 years old.
9027	(b) "Phototherapy device" means equipment that emits ultraviolet radiation used by a
9028	health care professional in the treatment of disease.
9029	(c) (i) "Tanning device" means equipment to which a tanning facility provides access
9030	that emits electromagnetic radiation with wavelengths in the air between 200 and 400
9031	nanometers used for tanning of the skin, including:
9032	(A) a sunlamp; and
9033	(B) a tanning booth or bed.
9034	(ii) "Tanning device" does not include a phototherapy device.
9035	(d) "Tanning facility" means a commercial location, place, area, structure, or business
9036	that provides access to a tanning device.
9037	(2) A tanning facility shall:
9038	(a) annually obtain a permit to do business as a tanning facility from the local health
9039	department with jurisdiction over the location in which the facility is located; and
9040	(b) in accordance with Subsection (3) post a warning sign in a conspicuous location
9041	that is readily visible to a person about to use a tanning device.
9042	(3) The posted warning and written consent required by Subsections (2) and (5) shall
9043	be developed by the department through administrative rules and shall include:
9044	(a) that there are health risks associated with the use of a tanning device;
9045	(b) that the facility may not allow a minor to use a tanning device unless the minor:
9046	(i) has a written order from a physician; or
9047	(ii) at each time of use is accompanied at the tanning facility by a parent or legal
9048	guardian who provides written consent authorizing the minor to use the tanning device.
9049	(4) It is unlawful for any operator of a tanning facility to allow a minor to use a tanning
9050	device unless:
9051	(a) the minor has a written order from a physician as defined in Section 58-67-102, to
9052	use a tanning device as a medical treatment; or

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each time that the minor uses a tanning device, except that the minor's parent or legal

(b) (i) the minor's parent or legal guardian appears in person at the tanning facility

guardian is not required to remain at the facility for the duration of the use; and
(ii) the minor's parent or legal guardian signs the consent form required in Subsection
(5).

(5).

(5) The written consent required by Subsection (4) shall be signed and dated each
time the minor uses a tanning device at the facility, and shall include at least:
(a) information concerning the health risks associated with the use of a tanning

- 9060 (a) information concerning the health risks associated with the use of a tanning device; and
 - (b) a statement that:

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- (i) the parent or legal guardian of the minor has read and understood the warnings given by the tanning facility, and consents to the minor's use of a tanning device; and
 - (ii) the parent or legal guardian agrees that the minor will use protective eye wear.
- (6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying:
- (a) minimum requirements a tanning facility shall satisfy to obtain a permit under Subsection (2);
- (b) the written information concerning health risks a facility should include in the posted signs required by Subsection (3) and in the consent form required by Subsection (5);
- (c) procedures a tanning facility shall implement to ensure a minor and the minor's parent or legal guardian comply with Subsections (4) and (5), including use of a statewide uniform form:
 - (i) for a parent or legal guardian to certify and give consent under Subsection (5); and
- (ii) that clearly identifies the department's seal or other means to indicate that the form is an official form of the department; and
- (d) the size, placement, and content of the sign a tanning facility must post under Subsection (2).
 - (7) (a) A violation of this section:
- (i) is an infraction; and
 - (ii) may result in the revocation of a permit to do business as a tanning facility.
- 9083 (b) If a person misrepresents to a tanning facility that the person is 18 years of age or older, the person is guilty of an infraction.
- 9085 (8) This section supercedes any ordinance enacted by the governing body of a political subdivision that:

9087	(a) imposes restrictions on access to a tanning device by a person younger than age
9088	18 that is not essentially identical to the provisions of this section; or
9089	(b) that require the posting of warning signs at the tanning facility that are not
9090	essentially identical to the provisions of this section.
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9092	[26-31-201.] <u>26B-7-408.</u> Procurement and use of a blood product is a service
9093	and not a sale <u> Blood donation by a minor</u> .
9094	(1) As used in this section:
9095	(a) "Blood" means human blood.
9096	(b) "Blood product" includes:
9097	(i) whole blood;
9098	(ii) blood plasma;
9099	(iii) a blood derivative;
9100	(iv) blood platelets; and
9101	(v) blood clotting agents.
9102	(2) The following are considered to be the rendition of a service by each participant
9103	and are not considered to be a sale:
9104	[(1)] (a) the procurement, processing, distribution, or use of a blood product for the
9105	purpose of injecting or transfusing the blood product into the human body; and
9106	[(2)] <u>(b)</u> the process of injecting or transfusing a blood product.
9107	(3) A minor who is at least 16 years old may donate blood to a voluntary,
9108	noncompensatory blood donation program if a parent or legal guardian of the minor consents
9109	to the donation.
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9111	[26-51-201.] <u>26B-7-409.</u> Scientific standards for methamphetamine
9112	decontamination Public education concerning methamphetamine contamination.
9113	(1) The department shall make rules adopting scientifically-based standards for
9114	methamphetamine decontamination.
9115	(2) A local health department, as defined in Title 26A, Local Health Authorities, shall
9116	follow rules made by the department under Subsection (1) in administering Title 19, Chapter
9117	6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act.

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(3) The department shall conduct a public education campaign to inform the public

about potential health risks of methamphetamine contamination.
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- 9121 [26-15a-104.] 26B-7-410. Food service establishment requirements --
- 9122 Enforcement -- Right of appeal -- Rulemaking -- Enforcement by local health 9123 departments.
- 9124 (1) Each food service establishment in the state shall be managed by at least one 9125 full-time certified food safety manager at each establishment site, who need not be present 9126 at the establishment site during all its hours of operation.
 - (2) Within 60 days of the termination of a certified food safety manager's employment that results in the food service establishment no longer being in compliance with Subsection (1), the food service establishment shall:
 - (a) employ a new certified food safety manager; or
 - (b) designate another employee to become the establishment's certified food safety manager who shall commence a department-approved food safety manager training course.
 - (3) Compliance with the 60-day time period provided in Subsection (2) may be extended by the local health department for reasonable cause, as determined by the department by rule.
 - (4) (a) The local health department may determine whether a food service establishment is in compliance with this section by visiting the establishment during regular business hours and requesting information and documentation about the employment of a certified food safety manager.
 - (b) If a violation of this section is identified, the local health department shall propose remedial action to bring the food service establishment into compliance.
 - (c) (i) A food service establishment receiving notice of a violation and proposed remedial action from a local health department may appeal the notice of violation and proposed remedial action pursuant to procedures established by the local health department, which shall be essentially consistent with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.
 - <u>(ii)</u> Notwithstanding the provisions of Section 63G-4-402, an appeal of a local health department decision [to a district court] shall be conducted as an original, independent proceeding, and not as a review of the proceedings conducted by the local health department.

9151	(iii) The [district] court shall give no deference to the findings or conclusions of the
9152	local health department.
9153	(5) (a) The department shall establish by rule made in accordance with Title 63G,
9154	Chapter 3, Utah Administrative Rulemaking Act:
9155	(i) a definition of "potentially hazardous foods" for purposes of this section and
9156	Section 26B-7-404; and
9157	(ii) any provisions necessary to implement this section.
9158	(b) The local health department with jurisdiction over the geographic area in which a
9159	food service establishment is located shall enforce the provisions of this section.
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9161	[26-15a-105.] <u>26B-7-411.</u> Exemptions to food service establishment
9162	requirements.
9163	(1) The following are not subject to the provisions of Section [26-15a-104] <u>26B-7-402</u>
9164	:
9165	(a) special events sponsored by municipal or nonprofit civic organizations, including
9166	food booths at school sporting events and little league athletic events and church functions;
9167	(b) temporary event food services approved by a local health department;
9168	(c) vendors and other food service establishments that serve only commercially
9169	prepackaged foods and beverages as defined by the department by rule;
9170	(d) private homes not used as a commercial food service establishment;
9171	(e) health care facilities licensed under Chapter 21, Health Care Facility Licensing
9172	and Inspection Act;
9173	(f) bed and breakfast establishments at which the only meal served is a continental
9174	breakfast as defined by the department by rule;
9175	(g) residential child care providers;
9176	(h) child care providers and programs licensed under Chapter 39, Utah Child Care
9177	Licensing Act;
9178	(i) back country food service establishments;
9179	(j) an event that is sponsored by a charitable organization, if, at the event, the
9180	organization:
9181	(i) provides food to a disadvantaged group free of charge; and
9182	(ii) complies with rules established by the department under Subsection (3); and

- (k) a lowest risk or permitted food establishment category determined by a risk assessment evaluation established by the department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (2) Nothing in this section may be construed as exempting a food service establishment described in Subsection (1) from any other applicable food safety laws of this state.
- 9189 (3) The department may establish additional requirements, in accordance with Title 9190 63G, Chapter 3, Utah Administrative Rulemaking Act, for charitable organizations providing 9191 food for free under Subsection (1)(j).

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[26-15a-106.] <u>26B-7-412.</u> Certified food safety manager.

- (1) Before a person may manage a food service establishment as a certified food safety manager, that person shall submit documentation in the format prescribed by the department to the appropriate local health department indicating a passing score on a department-approved examination.
- (2) To continue to manage a food service establishment, a certified food safety manager shall:
- (a) successfully complete, every three years, renewal requirements established by department rule which are consistent with original certification requirements; and
- (b) submit documentation in the format prescribed by the department within 30 days of the completion of renewal requirements to the appropriate local health department.
- (3) A local health department may deny, revoke, or suspend the authority of a certified food safety manager to manage a food service establishment or require the completion of additional food safety training courses for any one of the following reasons:
- (a) submitting information required under Subsection (1) or (2) that is false, incomplete, or misleading;
 - (b) repeated violations of department or local health department food safety rules; or
- (c) operating a food service establishment in a way that causes or creates a health hazard or otherwise threatens the public health, safety, or welfare.
- 9212 (4) A determination of a local health department made pursuant to Subsection (3) 9213 may be appealed by a certified food safety manager in the same manner provided for in 9214 Subsection 26-15a-104(4).

9215	(5) No person may use the title "certified food safety manager," or any other similar
9216	title, unless the person has satisfied the requirements of this chapter.
9217	(6) A local health department:
9218	(a) may not charge a fee to accept or process the documentation described in
9219	Subsections (1) and (2);
9220	(b) shall accept photocopies or electronic copies of the documentation described in
9221	Subsections (1) and (2); and
9222	(c) shall allow an individual to submit the documentation described in Subsections (1)
9223	and (2) by mail, email, or in person.
9224	(7) Certified food safety managers shall:
9225	(a) establish and monitor compliance with practices and procedures in the food
9226	service establishments where they are employed to maintain compliance with department
9227	and local health department food safety rules; and
9228	(b) perform such other duties that may be necessary to ensure food safety in the food
9229	service establishments where they are employed.
9230	(8) (a) The department shall establish by rule made in accordance with Title 63G,
9231	Chapter 3, Utah Administrative Rulemaking Act:
9232	(i) statewide, uniform standards for certified food safety managers;
9233	(ii) criteria for food safety certification examinations; and
9234	(iii) any provisions necessary to implement this section.
9235	(b) The local health department with jurisdiction over the geographic area in which a
9236	food service establishment is located shall enforce the provisions of this section.
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9238	[26-15-5.] <u>26B-7-413.</u> Requirements for food handlers Training program and
9239	testing requirements for permit Rulemaking <u> Exceptions</u> .
9240	(1) As used in this section:
9241	(a) "Approved food handler training program" means a training program described by
9242	this section and approved by the department.
9243	(b) "Food handler" means a person who works with unpackaged food, food
9244	equipment or utensils, or food-contact surfaces for a food service establishment.
9245	(c) "Food handler permit" means a permit issued by a local health department to allow

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a person to work as a food handler.

9247	[(d) "Food service establishment" has the same meaning as provided in Section
9248	26-15a-102.]
9249	(e) "Instructor" means an individual who is qualified to instruct an approved food
9250	handler program on behalf of a provider.
9251	(f) "Provider" means a person or entity that provides an approved food handler
9252	training program.
9253	(2) A person may not work as a food handler for a food service establishment unless
9254	the person:
9255	(a) successfully completes an approved food handler training program within 14 days
9256	after the day on which the person begins employment that includes food handler services;
9257	and
9258	(b) obtains a food handler permit within 30 days after the day on which the person
9259	begins employment that includes food handler services.
9260	(3) An approved food handler training program shall include:
9261	(a) at least 75 minutes of training time;
9262	(b) an exam, which requires a passing score of 75% and, except as provided in
9263	Subsection (11), consists of:
9264	(i) 40 multiple-choice questions developed by the department, in consultation with
9265	local health departments; and
9266	(ii) four content sections designated by rule of the department with 10 randomly
9267	selected questions for each content section; and
9268	(c) upon completion, the awarding of a certificate of completion that is valid with any
9269	local health department in the state for 30 days after the day on which the certificate is
9270	issued:
9271	(i) to a student who:
9272	(A) completes the training; and
9273	(B) passes the exam described in this Subsection (3) or an exam approved by the
9274	department in accordance with Subsection (11); and
9275	(ii) which certificate of completion:
9276	(A) includes student identifying information determined by department rule; and
9277	(B) is delivered by mail or electronic means.
9278	(4) (a) A person may obtain a food handler permit by:

- (i) providing a valid certificate of completion of an approved food handler training 9279 9280 program and an application, approved by the local health department, to a local health 9281 department; and 9282
 - (ii) paying a food handler permit fee to the local health department.
- 9283 (b) (i) A local health department may charge a food handler permit fee that is 9284 reasonable and that reflects the cost of managing the food safety program.
 - (ii) The department shall establish by rule the maximum amount a local health department may charge for the fee described in Subsection (4)(b)(i).
- 9287 (5) A person working as a food handler for a food service establishment shall obtain a 9288 food handler permit:
 - (a) before handling any food;

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- (b) within 30 days of initial employment with a food service establishment; and
- 9291 (c) within seven days of the expiration of an existing food handler permit.
- 9292 (6) (a) A person who holds a valid food handler permit under this section may serve 9293 as a food handler throughout the state without restriction.
- 9294 (b) A food handler permit granted after June 30, 2013, is valid for three years from the date of issuance. 9295
 - (7) An individual may not serve as an instructor, unless the provider includes the individual on the provider's list of instructors.
 - (8) The department, in consultation with local health departments, shall:
- 9299 (a) approve the content of an approved food handler training program required under 9300 Subsection (3);
 - (b) approve, as qualified, each provider; and
- (c) in accordance with applicable rules made under Subsection (12), provide a means 9302 9303 to authenticate:
 - (i) documents used in an approved food handler training program;
- 9305 (ii) the identity of an approved instructor; and
 - (iii) an approved provider.
 - (9) An approved food handler training program shall:
- 9308 (a) provide basic instruction on the Centers for Disease Control and Prevention's top 9309 five foodborne illness risk factors, including:
 - (i) improper hot and cold holding temperatures of potentially hazardous food;

9311	(ii) improper cooking temperatures of food;
9312	(iii) dirty or contaminated utensils and equipment;
9313	(iv) poor employee health and hygiene; and
9314	(v) food from unsafe sources;
9315	(b) be offered through:
9316	(i) a trainer-led class;
9317	(ii) the Internet; or
9318	(iii) a combination of a trainer-led class and the Internet;
9319	(c) maintain a system to verify a certificate of completion of an approved food handler
9320	training program issued under Subsection (3) to the department, a local health department,
9321	and a food service establishment; and
9322	(d) provide to the department unrestricted access to classroom training sessions and
9323	online course materials at any time for audit purposes.
9324	(10) (a) A provider that provides an approved food handler training program may
9325	charge a reasonable fee.
9326	(b) If a person or an entity is not approved by the department to provide an approved
9327	food handler training program, the person or entity may not represent, in connection with the
9328	person's or entity's name or business, including in advertising, that the person or entity is a
9329	provider of an approved food handler training program or otherwise represent that a program
9330	offered by the person or entity will qualify an individual to work as a food handler in the state.
9331	(11) (a) Subject to the approval of the department every three years, a provider may
9332	use an exam that consists of questions that do not conform with the provisions of Subsection
9333	(3)(b), if:
9334	(i) the provider complies with the provisions of this Subsection (11);
9335	(ii) the provider pays a fee every three years to the department, which fee shall be
9336	determined by the department and shall reflect the cost of the review of the alternative test
9337	questions; and
9338	(iii) an independent instructional design and testing expert provides a written report to
9339	the department containing a positive recommendation based on the expert's analysis as
9340	described in Subsection 11(b).
9341	(b) (i) A provider may request approval of a different bank of test questions other than

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the questions developed under Subsection (3) by submitting to the department a proposed

bank of at least 200 test questions organized by learning objective in accordance with Subsection (9)(a).

- (ii) A provider proposing a different bank of test questions under this Subsection (11) shall contract with an independent instructional design and testing expert approved by the department at the provider's expense to analyze the provider's bank of test questions to ensure the questions:
- 9349 (A) effectively measure the applicant's knowledge of the required learning objectives; 9350 and
 - (B) meet the appropriate testing standards for question structure.
 - (c) If the department provides written notice to a provider that any test question of the provider's approved exam under this Subsection (11) inadequately tests the required learning objectives, the provider shall make required changes to the question within 30 days after the day on which written notice is received by the provider.
 - (d) A food handler exam offered by a provider may be:
 - (i) a written exam;

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- (ii) an online exam; or
- 9359 (iii) an oral exam, if circumstances require, including when an applicant's language or reading abilities interfere with taking a written or online exam.
 - (e) A provider shall routinely rotate test questions from the test question bank, change the order of test questions in tests, and change the order of multiple-choice answers in test questions to discourage cheating.
 - (12) (a) When exercising rulemaking authority under this section the department shall comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b) The department shall, by rule, establish requirements designed to inhibit fraud for an approved food handler training program described in this section.
 - (c) The requirements described in Subsection (12)(b) may include requirements to ensure that:
 - (i) an individual does not attempt to complete the program or exam in another individual's place;
- 9372 (ii) an individual taking the approved food handler training program is focused on 9373 training material and actively engaged throughout the training period;
 - (iii) if the individual is unable to participate online because of technical difficulties, an

approved food handler training program provides technical support, such as requiring a 9375 9376 telephone number, email, or other method of communication to allow an individual taking the online course or test to receive assistance; 9377

- (iv) an approved food handler training program provider maintains a system to reduce fraud as to who completes an approved food handler training program, such as requiring a distinct online certificate with information printed on the certificate that identifies a person taking an online course or exam, or requiring measures to inhibit duplication of a certificate of completion or of a food handler permit;
 - (v) the department may audit an approved food handler training program;
- (vi) an individual taking an online course or certification exam has the opportunity to provide an evaluation of the online course or test:
- (vii) an approved food handler training program provider track the Internet protocol address or similar electronic location of an individual who takes an online course or certification exam;
- 9389 (viii) an individual who takes an online course or exam uses an electronic signature; 9390 or
 - (ix) if the approved food handler training program provider learns that a certificate of completion does not accurately reflect the identity of the individual who took the online course or certification exam, an approved food handler training program provider invalidates the certificate of completion.
 - (13) An instructor is not required to satisfy any additional training requirements if the instructor:
 - (a) is an educator in a public or private school; and
 - (b) teaches a food program that includes food safety in a public or private school in which the instructor is an educator.
 - (14) (a) This section does not apply to an individual who handles food:
- (i) at an event sponsored by a charitable organization where the organization provides 9402 food to a disadvantaged group free of charge; and
 - (ii) in compliance with rules established by the department under Subsection (2).
- (b) The department may establish additional requirements, in accordance with Title 9404 9405 63G, Chapter 3, Utah Administrative Rulemaking Act, for individuals handling food at an 9406 event sponsored by a charitable organization under Subsection (14)(a).

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9407	[26-15-9.] <u>26B-7-414.</u> Impoundment of adulterated food products authorized.
9408	The department and local health departments may impound any food products found
9409	in places where food or drink is handled, sold, or served to the public that is intended for but
9410	found to be adulterated and unfit for human consumption; and, upon five days notice and
9411	reasonable opportunity for a hearing to the interested parties, to condemn and destroy the
9412	same if deemed necessary for the protection of the public health.
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9414	[26-15b-105.] <u>26B-7-415.</u> Agrotourism food establishment permits Permit
9415	requirements Inspections.
9416	(1) As used in this section, "operator" means a person who owns, manages, or
9417	controls, or who has the duty to manage or control, the farm.
9418	(2) (a) A farm may not operate an agritourism food establishment unless the farm
9419	obtains a permit from the local health department that has jurisdiction over the area in which
9420	the farm is located.
9421	(b) In accordance with Section 26A-1-121, and subject to the restrictions of Section
9422	26-15b-105, a local health department shall make standards and regulations relating to the
9423	permitting of an agritourism food establishment.
9424	(c) In accordance with Section 26A-1-114, a local health department shall impose a
9425	fee for an agritourism food establishment permit in an amount that reimburses the local
9426	health department for the cost of regulating the agritourism food establishment.
9427	(3) (a) A local health department with jurisdiction over an area in which a farm is
9428	located may grant an agritourism food establishment permit to the farm.
9429	(b) Nothing in this section prevents a local health department from revoking an
9430	agritourism food establishment permit issued by the local health department if the operation
9431	of the agritourism food establishment violates the terms of the permit or Section 26B-7-408.
9432	[(1)] <u>(4)</u> A farm may qualify for an agritourism food establishment permit if:
9433	(a) poultry products that are served at the agritourism food establishment are
9434	slaughtered and processed in compliance with the Poultry Products Inspection Act, 21 U.S.C
9435	Sec. 451 et seq., and the applicable regulations issued pursuant to that act;
9436	(b) meat not described in Subsection (1)(a) that is served at the agritourism food
9437	establishment is slaughtered and processed in compliance with the Federal Meat Inspection
9438	Act, 21 U.S.C. Sec. 601 et seq., and the applicable regulations issued pursuant to that act;

- 9439 (c) a kitchen facility used to prepare food for the agritourism food establishment 9440 meets the requirements established by the department;
- 9441 (d) the farm operates the agritourism food establishment for no more than 14 9442 consecutive days at a time; and
 - (e) the farm complies with the requirements of this section.
- 9444 [(2)] (5) The department shall, in accordance with Title 63G, Chapter 3, Utah 9445 Administrative Rulemaking Act, make rules regarding sanitation, equipment, and 9446 maintenance requirements for agritourism food establishments.
- 9447 [(3)] (6) A local health department shall:

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- 9448 (a) ensure compliance with the rules described in Subsection (2) when inspecting a 9449 kitchen facility;
 - (b) notwithstanding Section 26A-1-113, inspect the kitchen facility of a farm that requests an agritourism food establishment permit only:
 - (i) for an initial inspection, no more than one week before the agritourism food establishment is scheduled to begin operation;
 - (ii) for an unscheduled inspection:
 - (A) of an event scheduled to last no more than three days if the local health department conducts the inspection within three days before or after the day on which the agritourism food establishment is scheduled to begin operation; or
 - (B) of an event scheduled to last longer than three days if the local health department conducts the inspection within three days before or after the day on which the agritourism food establishment is scheduled to begin operation, or conducts the inspection during operating hours of the agritourism food establishment; or
 - (iii) for subsequent inspections if:
 - (A) the local health department provides the operator with reasonable advanced notice about an inspection; or
 - (B) the local health department has a valid reason to suspect that the agritourism food establishment is the source of an adulterated food or of an outbreak of illness caused by a contaminated food; and
 - (c) document the reason for any inspection after the permitting inspection, keep a copy of that documentation on file with the agritourism food establishment's permit, and provide a copy of that documentation to the operator.

9471	[(4)] <u>(7)</u> An agritourism food establishment shall:
9472	(a) take steps to avoid any potential contamination to:
9473	(i) food;
9474	(ii) equipment;
9475	(iii) utensils; or
9476	(iv) unwrapped single-service and single-use articles; and
9477	(b) prevent an individual from entering the food preparation area while food is being
9478	prepared if the individual is known to be suffering from:
9479	(i) symptoms associated with acute gastrointestinal illness; or
9480	(ii) a communicable disease that is transmissible through food.
9481	[(5)] When making the rules described in Subsection $[(2)]$ (5), the department
9482	may not make rules regarding:
9483	(a) hand washing facilities, except to require that a hand washing station supplied with
9484	warm water, soap, and disposable hand towels is conveniently located;
9485	(b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require
9486	that the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that
9487	dishes are sanitized between each use;
9488	(c) the individuals allowed access to the food preparation areas, food storage, and
9489	washing areas, except during food preparation;
9490	(d) display guards, covers, or containers for display foods, except to require that any
9491	food on display that is not protected from the direct line of a consumer's mouth by an
9492	effective means is not served or sold to any subsequent consumer;
9493	(e) outdoor display and sale of food, except to require that food is maintained at
9494	proper holding temperatures;
9495	(f) reuse by an individual of drinking cups and tableware for multiple portions;
9496	(g) utensils and equipment, except to require that utensils and equipment used in the
9497	home kitchen:
9498	(i) retain their characteristic qualities under normal use conditions;
9499	(ii) are properly sanitized after use; and
9500	(iii) are maintained in a sanitary manner between uses;
9501	(h) food contact surfaces, except to require that food contact surfaces are smooth,

9502 easily cleanable, in good repair, and properly sanitized between tasks;

- 9503 (i) non-food contact surfaces, if those surfaces are made of materials ordinarily used 9504 in residential settings, except to require that those surfaces are kept clean from the 9505 accumulation of residue and debris;
 - (j) clean-in-place equipment, except to require that the equipment is cleaned and sanitized between uses;
 - (k) ventilation, except to require that gases, odors, steam, heat, grease, vapors, and smoke are able to escape the kitchen;
 - (I) fixed temperature measuring devices or product mimicking sensors for the holding equipment for [time/temperature] time or temperature control food, except to require non-fixed temperature measuring devices for hot and cold holding of food during storage, serving, and cooling;
 - (m) fixed floor-mounted and table-mounted equipment except to require that floor-mounted and table-mounted equipment be in good repair and sanitized between uses;
 - (n) dedicated laundry facilities, except to require that linens used for the agritourism food establishment are stored and laundered separately from household laundry and that soiled laundry is stored to prevent contamination of food and equipment;
 - (o) water, plumbing, drainage, and waste, except to require that sinks be supplied with hot water;
 - (p) the number of and path of access to toilet facilities, except to require that toilet facilities are equipped with proper handwashing stations;
 - (q) lighting, except to require that food preparation areas are well lit by natural or artificial light whenever food is being prepared;
 - (r) designated dressing areas and storage facilities, except to require that items not ordinarily found in a home kitchen are placed or stored away from food preparation areas, that dressing takes place outside of the kitchen facility, and that food items are stored in a manner that does not allow for contamination;
 - (s) the presence and handling of animals, except to require that all animals are kept outside of food preparation and service areas during food service and food preparation;
 - (t) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces are smooth, of durable construction, easily cleanable, and kept clean and free of debris;
 - (u) kitchen facilities open to living areas, except to require that food is only prepared, handled, or stored in kitchen and food storage areas;

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- (v) submission of plans and specifications before construction or remodel of a kitchen facility;
- 9537 (w) the number and type of [time/temperature] time or temperature controlled food offered for sale;
 - (x) approved food sources, except those required by 9 C.F.R. 303.1;
 - (y) the use of an open air barbeque, grill, or outdoor wood-burning oven; or
- 9541 (z) food safety certification, except any individual who is involved in the preparation, 9542 storage, or service of food in the agritourism food establishment shall hold a food handler 9543 permit as defined in Section 26-15-5.
- 9544 [(6)] (9) An operator applying for an agritourism food establishment permit shall provide to the local health department:
 - (a) written consent to enter the premises where food is prepared, cooked, stored, or harvested for the agritourism food establishment; and
 - (b) written standard operating procedures that include:
 - (i) all food that will be stored, handled, and prepared;
 - (ii) the proposed procedures and methods of food preparation and handling;
 - (iii) procedures, methods, and schedules for cleaning utensils and equipment;
- 9552 (iv) procedures and methods for the disposal of refuse; and
- (v) a plan for maintaining [time/temperature] time or temperature controlled food at the appropriate temperatures for each [time/temperature] time or temperature controlled food.
 - [(7)] (10) In addition to a fee charged under [Section 26-15b-103] Subsection (2), if the local health department is required to inspect the farm as a source of an adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result of that inspection, that the farm has produced an adulterated food or was the source of an outbreak of illness caused by a contaminated food, the local health department may charge and collect from the farm a fee for that inspection.
- 9562 [(8)] (11) An agritourism food establishment permit:
- 9563 (a) is nontransferable;

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- (b) is renewable on an annual basis;
- (c) is restricted to the location listed on the permit; and
- (d) shall provide the operator the opportunity to update the food types and products

9567	handled without requiring the operator to renew the permit.
9568	[(9)] <u>(12)</u> This section does not prohibit an operator from applying for a different type
9569	of food event permit from a local health department.
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9571	[26-15c-105.] <u>26B-7-416.</u> <u>Microenterprise home kitchen permits Fees</u>
9572	Safety and health inspections Permit requirements.
9573	(1) As used in this section, "operator" means an individual who resides in the private
9574	home and who manages or controls the microenterprise home kitchen.
9575	(2) (a) An operator may not operate a microenterprise home kitchen unless the
9576	operator obtains a permit from the local health department that has jurisdiction over the area
9577	in which the microenterprise home kitchen is located.
9578	(b) In accordance with Section 26A-1-121, and subject to the restrictions of Section
9579	26-15c-105, the department shall make standards and regulations relating to the permitting
9580	of a microenterprise home kitchen.
9581	(c) In accordance with Section 26A-1-114, a local health department shall impose a
9582	fee for a microenterprise home kitchen permit in an amount that reimburses the local health
9583	department for the cost of regulating the microenterprise home kitchen.
9584	(3) (a) A local health department with jurisdiction over an area in which a
9585	microenterprise home kitchen is located may grant a microenterprise home kitchen permit to
9586	the operator.
9587	(b) Nothing in this section prevents a local health department from revoking a
9588	microenterprise home kitchen permit issued by the local health department if the operation of
9589	the microenterprise home kitchen violates the terms of the permit or this section.
9590	[(1)] <u>(4)</u> An operator may qualify for a microenterprise home kitchen permit if:
9591	(a) food that is served at the microenterprise home kitchen is processed in
9592	compliance with state and federal regulations;
9593	(b) a kitchen facility used to prepare food for the microenterprise home kitchen meets
9594	the requirements established by the department;
9595	(c) the microenterprise home kitchen operates only during the hours approved in the
9596	microenterprise home kitchen permit; and
9597	(d) the microenterprise home kitchen complies with the requirements of this section.
9598	[(2)] (5) The department shall, in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, make rules regarding sanitation, equipment, and 9599 9600 maintenance requirements for microenterprise home kitchens. 9601 (6) A local health department shall: 9602 (a) ensure compliance with the rules described in Subsection (2) when inspecting a 9603 microenterprise home kitchen; 9604 (b) notwithstanding Section 26A-1-113, inspect a microenterprise home kitchen that 9605 requests a microenterprise home kitchen permit only: 9606 (i) for an initial inspection, no more than one week before the microenterprise home 9607 kitchen is scheduled to begin operation; 9608 (ii) for an unscheduled inspection, if the local health department conducts the inspection: 9609 9610 (A) within three days before or after the day on which the microenterprise home 9611 kitchen is scheduled to begin operation; or 9612 (B) during operating hours of the microenterprise home kitchen; or 9613 (iii) for subsequent inspections if: 9614 (A) the local health department provides the operator with reasonable advanced 9615 notice of the inspection; or 9616 (B) the local health department has a valid reason to suspect that the microenterprise home kitchen is the source of an adulterated food or of an outbreak of illness caused by a 9617 9618 contaminated food; and 9619 (c) document the reason for any inspection after the initial inspection, keep a copy of 9620 that documentation on file with the microenterprise home kitchen's permit, and provide a 9621 copy of that documentation to the operator. 9622 (4) (7) A microenterprise home kitchen shall: 9623 (a) take steps to avoid any potential contamination to: 9624 (i) food; 9625 (ii) equipment; (iii) utensils; or 9626 (iv) unwrapped single-service and single-use articles; 9627 9628 (b) prevent an individual from entering the food preparation area while food is being

prepared if the individual is known to be suffering from:

(i) symptoms associated with acute gastrointestinal illness; or

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9631	(ii) a communicable disease that is transmissible through food; and
9632	(c) comply with the following requirements:
9633	(i) time or temperature control food shall be prepared, cooked, and served on the
9634	same day;
9635	(ii) food that is sold or provided to a customer may not be consumed onsite at the
9636	microenterprise home kitchen operation;
9637	(iii) food that is sold or provided to a customer shall be picked up by the consumer or
9638	delivered within a safe time period based on holding equipment capacity;
9639	(iv) food preparation may not involve processes that require a HACCP plan, or the
9640	production, service, or sale of raw milk or raw milk products;
9641	(v) molluscan shellfish may not be served or sold;
9642	(vi) the operator may only sell or provide food directly to consumers and may not sell
9643	or provide food to any wholesaler or retailer; and
9644	(vii) the operator shall provide the consumer with a notification that, while a permit
9645	has been issued by the local health department, the kitchen may not meet all of the
9646	requirements of a commercial retail food establishment.
9647	[(5)] (8) When making the rules described in Subsection $[(2)]$ (5), the department
9648	may not make rules regarding:
9649	(a) hand washing facilities, except to require that a hand washing station supplied with
9650	warm water, soap, and disposable hand towels is conveniently located in food preparation,
9651	food dispensing, and warewashing areas;
9652	(b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require
9653	that the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that
9654	dishes are sanitized between each use;
9655	(c) the individuals allowed access to the food preparation areas, food storage areas,
9656	and washing areas, except during food preparation;
9657	(d) display guards, covers, or containers for display foods, except to require that
9658	ready-to-eat food is protected from contamination during storage, preparation, handling,

- (e) outdoor display and sale of food, except to require that food is maintained at proper holding temperatures;
 - (f) utensils and equipment, except to require that utensils and equipment used in the

transport, and display;

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9663	home kitchen:
9664	(i) retain their characteristic qualities under normal use conditions;
9665	(ii) are properly sanitized after use; and
9666	(iii) are maintained in a sanitary manner between uses;
9667	(g) food contact surfaces, except to require that food contact surfaces are smooth,
9668	easily cleanable, in good repair, and properly sanitized between tasks;
9669	(h) non-food contact surfaces, if those surfaces are made of materials ordinarily used
9670	in residential settings, except to require that those surfaces are kept clean from the
9671	accumulation of residue and debris;
9672	(i) clean-in-place equipment, except to require that the equipment is cleaned and
9673	sanitized between uses;
9674	(j) ventilation, except to require that gases, odors, steam, heat, grease, vapors, and
9675	smoke are able to escape the kitchen;
9676	(k) fixed temperature measuring devices or product mimicking sensors for the holding
9677	equipment for time or temperature control food, except to require non-fixed temperature
9678	measuring devices for hot and cold holding of food during storage, serving, and cooling;
9679	(I) fixed floor-mounted and table-mounted equipment, except to require that
9680	floor-mounted and table-mounted equipment be in good repair and sanitized between uses;
9681	(m) dedicated laundry facilities, except to require that linens used for the
9682	microenterprise home kitchen are stored and laundered separately from household laundry
9683	and that soiled laundry is stored to prevent contamination of food and equipment;
9684	(n) water, plumbing, drainage, and waste, except to require that:
9685	(i) sinks be supplied with hot and cold potable water from:
9686	(A) an approved public water system as defined in Section 19-4-102;
9687	(B) if the local health department with jurisdiction over the microenterprise home
9688	kitchen has regulations regarding the safety of drinking water, a source that meets the local
9689	health department's regulations regarding the safety of drinking water; or
9690	(C) a water source that is tested at least once per month for bacteriologic quality, and
9691	at least once in every three year period for lead and copper; and
9692	(ii) food preparation and service is discontinued in the event of a disruption of potable
9693	water service;

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(o) the number of and path of access to toilet facilities, except to require that toilet

facilities are equipped with proper handwashing stations; 9695

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- 9696 (p) lighting, except to require that food preparations are well lit by natural or artificial light whenever food is being prepared; 9697
 - (g) designated dressing areas and storage facilities, except to require that items not ordinarily found in a home kitchen are placed or stored away from food preparation areas, that dressing takes place outside of the kitchen facility, and that food items are stored in a manner that does not allow for contamination;
 - (r) the presence and handling of animals, except to require that all animals are kept outside of food preparation and service areas;
 - (s) food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces are smooth, of durable construction, easily cleanable, and kept clean and free of debris;
 - (t) kitchen facilities open to living areas, except to require that food is only prepared, handled, or stored in kitchen and food storage areas;
 - (u) submission of plans and specifications before construction or remodel of a kitchen facility;
 - (v) the number and type of time or temperature controlled food offered for sale. except:
- 9712 (i) a raw time or temperature controlled food such as raw fish, raw milk, and raw 9713 shellfish:
 - (ii) any food requiring special processes that would necessitate a HACCP plan; and
 - (iii) fish from waters of the state;
 - (w) approved food sources, except to require that:
 - (i) food in a hermetically sealed container is obtained from a regulated food processing plant;
- 9719 (ii) liquid milk and milk products are obtained from sources that comply with Grade A 9720 standards specified by the Department of Agriculture and Food by rule made in accordance 9721 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (iii) fish for sale or service are commercially and legally caught;
- 9723 (iv) mushrooms picked in the wild are not offered for sale or service; and
- (v) game animals offered for sale or service are raised, slaughtered, and processed 9724 9725 according to rules governing meat and poultry as specified by the Department of Agriculture 9726 and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

9727	Rulemaking Act;
9728	(x) the use of items produced under this chapter; or
9729	(y) the use of an open air barbeque, grill, or outdoor wood-burning oven.
9730	[(6)] (9) An operator applying for a microenterprise home kitchen permit shall provide
9731	to the local health department:
9732	(a) written consent to enter the premises where food is prepared, cooked, stored, or
9733	harvested for the microenterprise home kitchen; and
9734	(b) written standard operating procedures that include:
9735	(i) all food that will be stored, handled, and prepared;
9736	(ii) the proposed procedures and methods of food preparation and handling;
9737	(iii) procedures, methods, and schedules for cleaning utensils and equipment;
9738	(iv) procedures and methods for the disposal of refuse; and
9739	(v) a plan for maintaining time or temperature controlled food at the appropriate
9740	temperatures for each time or temperature controlled food.
9741	[(7)] <u>(10)</u> In addition to a fee charged under [Section 26-15c-103] <u>Subsection (2)</u> , if
9742	the local health department is required to inspect the microenterprise home kitchen as a
9743	source of an adulterated food or an outbreak of illness caused by a contaminated food and
9744	finds, as a result of that inspection, that the microenterprise home kitchen has produced an
9745	adulterated food or was the source of an outbreak of illness caused by a contaminated food,
9746	the local health department may charge and collect from the microenterprise home kitchen a
9747	fee for that inspection.
9748	[(8)] (11) A microenterprise home kitchen permit:
9749	(a) is nontransferable;
9750	(b) is renewable on an annual basis;
9751	(c) is restricted to the location and hours listed on the permit;
9752	(d) shall include a statement that reads: "This location is permitted under modified
9753	FDA requirements."; and
9754	(e) shall provide the operator the opportunity to update the food types and products
9755	handled without requiring the operator to renew the permit.
9756	[(9)] (12) This section does not prohibit an operator from applying for a different type
9757	of food event permit from a local health department.

9759	Part 5. Regulation of Smoking, Tobacco Products, and Nicotine Products.
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9761	[26-62-102.] <u>26B-7-501.</u> Definitions.
9762	As used in this [chapter] <u>part</u> :
9763	(1) "Community location" means the same as that term is defined:
9764	(a) as it relates to a municipality, in Section 10-8-41.6; and
9765	(b) as it relates to a county, in Section 17-50-333.
9766	(2) "Electronic cigarette" means the same as that term is defined in Section
9767	<u>76-10-101.</u>
9768	[(2)] (3) "Electronic cigarette product" means the same as that term is defined in
9769	Section 76-10-101.
9770	(4) "Electronic cigarette substance" means the same as that term is defined in
9771	Section 76-10-101.
9772	[(3)] <u>(5)</u> "Employee" means an employee of a tobacco retailer.
9773	[(4)] <u>(6)</u> "Enforcing agency" means the [state Department of Health] department, or
9774	any local health department enforcing the provisions of this chapter.
9775	[(5)] (7) "General tobacco retailer" means a tobacco retailer that is not a retail
9776	tobacco specialty business.
9777	[(6) "Local health department" means the same as that term is defined in Section
9778	26A-1-102.]
9779	(8) "Manufacture" includes:
9780	(a) to cast, construct, or make electronic cigarettes; or
9781	(b) to blend, make, process, or prepare an electronic cigarette substance.
9782	(9) "Manufacturer sealed electronic cigarette substance" means an electronic
9783	cigarette substance that is sold in a container that:
9784	(a) is prefilled by the electronic cigarette substance manufacturer; and
9785	(b) the electronic cigarette manufacturer does not intend for a consumer to open.
9786	(10) "Manufacturer sealed electronic cigarette product" means:
9787	(a) an electronic cigarette substance or container that the electronic cigarette
9788	manufacturer does not intend for a consumer to open or refill; or
9789	(b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.
9790	(11) "Nicotine" means the same as that term is defined in Section 76-10-101.

9791	[(7)] <u>(12)</u> "Nicotine product" means the same as that term is defined in Section
9792	76-10-101.
9793	(13) "Non-tobacco shisha" means any product that:
9794	(a) does not contain tobacco or nicotine; and
9795	(b) is smoked or intended to be smoked in a hookah or water pipe.
9796	[(8)] <u>(14)</u> "Owner" means a person holding a 20% ownership interest in the business
9797	that is required to obtain a permit under this chapter.
9798	[(9)] <u>(15)</u> "Permit" means a tobacco retail permit issued under this chapter.
9799	(16) "Place of public access" means any enclosed indoor place of business,
9800	commerce, banking, financial service, or other service-related activity, whether publicly or
9801	privately owned and whether operated for profit or not, to which persons not employed at the
9802	place of public access have general and regular access or which the public uses, including:
9803	(a) buildings, offices, shops, elevators, or restrooms;
9804	(b) means of transportation or common carrier waiting rooms;
9805	(c) restaurants, cafes, or cafeterias;
9806	(d) taverns as defined in Section 32B-1-102, or cabarets;
9807	(e) shopping malls, retail stores, grocery stores, or arcades;
9808	(f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
9809	sites, auditoriums, or arenas;
9810	(g) barber shops, hair salons, or laundromats;
9811	(h) sports or fitness facilities;
9812	(i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
9813	breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
9814	hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of
9815	any of these;
9816	(j) (i) any child care facility or program subject to licensure or certification under this
9817	title, including those operated in private homes, when any child cared for under that license is
9818	present; and
9819	(ii) any child care, other than child care as defined in Section 26-39-102, that is not
9820	subject to licensure or certification under this title, when any child cared for by the provider,
9821	other than the child of the provider, is present;
9822	(k) public or private elementary or secondary school buildings and educational

9823	facilities or the property on which those facilities are located;
9824	(I) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
9825	religious organization when used solely by the organization members or their guests or
9826	families;
9827	(m) any facility rented or leased for private functions from which the general public is
9828	excluded and arrangements for the function are under the control of the function sponsor;
9829	(n) any workplace that is not a place of public access or a publicly owned building or
9830	office but has one or more employees who are not owner-operators of the business;
9831	(o) any area where the proprietor or manager of the area has posted a conspicuous
9832	sign stating "no smoking", "thank you for not smoking", or similar statement; and
9833	(p) a holder of a bar establishment license, as defined in Section 32B-1-102.
9834	[(10)] <u>(17)</u> (a) "Proof of age" means:
9835	(i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
9836	Card Act;
9837	(ii) a valid identification that:
9838	(A) is substantially similar to an identification card issued under Title 53, Chapter 3,
9839	Part 8, Identification Card Act;
9840	(B) is issued in accordance with the laws of a state other than Utah in which the
9841	identification is issued;
9842	(C) includes date of birth; and
9843	(D) has a picture affixed;
9844	(iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
9845	Driver License Act, or in accordance with the laws of the state in which the valid driver
9846	license is issued;
9847	(iv) a valid United States military identification card that:
9848	(A) includes date of birth; and
9849	(B) has a picture affixed; or
9850	(v) a valid passport.
9851	(b) "Proof of age" does not include a valid driving privilege card issued in accordance
9852	with Section 53-3-207.
9853	(18) "Publicly owned building or office" means any enclosed indoor place or portion of
9854	a place owned, leased, or rented by any state, county, or municipal government, or by any

9855 agency supported by appropriation of, or by contracts or grants from, funds derived from the 9856 collection of federal, state, county, or municipal taxes. [(11)] (19) "Retail tobacco specialty business" means the same as that term is 9857 9858 defined: 9859 (a) as it relates to a municipality, in Section 10-8-41.6; and (b) as it relates to a county, in Section 17-50-333. 9860 (20) "Shisha" means any product that: 9861 9862 (a) contains tobacco or nicotine; and 9863 (b) is smoked or intended to be smoked in a hookah or water pipe. 9864 (21) "Smoking" means: (a) the possession of any lighted or heated tobacco product in any form; 9865 9866 (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, 9867 or hookah that contains: 9868 (i) tobacco or any plant product intended for inhalation; 9869 (ii) shisha or non-tobacco shisha; 9870 (iii) nicotine; 9871 (iv) a natural or synthetic tobacco substitute; or 9872 (v) a natural or synthetic flavored tobacco product; 9873 (c) using an electronic cigarette; or 9874 (d) using an oral smoking device intended to circumvent the prohibition of smoking in 9875 this chapter. 9876 [(12)] (22) "Tax commission license" means a license issued by the State Tax 9877 Commission under: (a) Section 59-14-201 to sell a cigarette at retail: 9878 9879 (b) Section 59-14-301 to sell a tobacco product at retail; or 9880 (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product. 9881 [(13)] (23) "Tobacco product" means: (a) a tobacco product as defined in Section 76-10-101; or 9882 9883 (b) tobacco paraphernalia as defined in Section 76-10-101. [(14)] (24) "Tobacco retailer" means a person that is required to obtain a tax 9884 commission license. 9885

9887	[26-15-11.] <u>26B-7-502.</u> Statutes on smoking considered public health laws.
9888	[Title 26, Chapter 38, Utah Indoor Clean Air Act,] Section 26B-7-503 is a public
9889	health law and shall be enforced by the department and local health departments.
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9891	[26-38-3.] <u>26B-7-503.</u> <u>Utah Indoor Clean Air Act</u> Restriction on smoking in
9892	public places and in specified places Exceptions Enforcement Penalties Local
9893	ordinances .
9894	(1) Except as provided in [Subsection (2)] Subsections (2) and (3), smoking is
9895	prohibited in all enclosed indoor places of public access and publicly owned buildings and
9896	offices.
9897	(2) Subsection (1) does not apply to:
9898	(a) areas not commonly open to the public of owner-operated businesses having no
9899	employees other than the owner-operator;
9900	(b) guest rooms in hotels, motels, "bed and breakfast" lodging facilities, and other
9901	similar lodging facilities, but smoking is prohibited under Subsection (1) in the common areas
9902	of these facilities, including dining areas and lobby areas; and
9903	(c) separate enclosed smoking areas:
9904	(i) located in the passenger terminals of an international airport located in the city of
9905	the first class;
9906	(ii) vented directly to the outdoors; and
9907	(iii) certified, by a heating, ventilation, and air conditioning engineer licensed by the
9908	state, to prevent the drift of any smoke to any nonsmoking area of the terminal.
9909	(3) (a) A person is exempt from the restrictions of Subsection (1) if the person:
9910	(i) is a member of an American Indian tribe whose members are recognized as
9911	eligible for the special programs and services provided by the United States to American
9912	Indians who are members of those tribes;
9913	(ii) is an American Indian who actively practices an American Indian religion, the
9914	origin and interpretation of which is from a traditional American Indian culture;
9915	(iii) is smoking tobacco using the traditional pipe of an American Indian tribal religious
9916	ceremony, of which tribe the person is a member, and is smoking the pipe as part of that
9917	ceremony; and
9918	(iv) the ceremony is conducted by a pipe carrier, Indian spiritual person, or medicine

9919	person recognized by the tribe of which the person is a member and the Indian community.
9920	(b) This Subsection (3) takes precedence over Subsection (1).
9921	(c) A religious ceremony using a traditional pipe under this section is subject to any
9922	applicable state or local law, except as provided in this section.
9923	(4) (a) An owner or the agent or employee of the owner of a place where smoking is
9924	prohibited under Subsection(1) who observes a person smoking in apparent violation of this
9925	chapter shall request the person to stop smoking.
9926	(b) If the person fails to comply, the proprietor or the agent or employee of the
9927	proprietor shall ask the person to leave the premises.
9928	(5) (a) A first violation of Subsection (1) is subject to a civil penalty of not more than
9929	<u>\$100.</u>
9930	(b) Any second or subsequent violation of Subsection (1) is subject to a civil penalty
9931	of not less than \$100 and not more than \$500.
9932	(6) (a) The department and local health departments shall:
9933	(i) enforce this chapter and shall coordinate their efforts to promote the most effective
9934	enforcement of this chapter; and
9935	(ii) impose the penalties under Section 26-38-8 in accordance with this section.
9936	(b) When enforcing this chapter, the department and the local health departments
9937	shall notify persons of alleged violations of this chapter, conduct hearings, and impose
9938	penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
9939	(c) The department shall adopt rules necessary and reasonable to implement the
9940	provisions of Title 26, Chapter 38, Utah Indoor Clean Air Act.
9941	(7) Civil penalties collected under this section by:
9942	(a) a local health department shall be paid to the treasurer of the county in which the
9943	violation was committed; and
9944	(b) the department shall be deposited in the General Fund.
9945	(8) (a) This section supersedes any ordinance enacted by the governing body of a
9946	political subdivision that restricts smoking in a place of public access as defined in Section
9947	26-38-2 and that is not essentially identical to the provisions of this chapter.
9948	(b) This section does not supersede an ordinance enacted by the governing body of
9949	a political subdivision that restricts smoking in outdoor places of public access which are
9950	owned or operated by:

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9951
              (i) a political subdivision as defined in Section 17B-1-102;
9952
              (ii) a state institution of higher education; or
9953
              (iii) a state institution of public education.
9954
9955
              [<del>26-43-102.</del>] 26B-7-504. Gathering of information.
9956
              (1) The department shall obtain annually publicly available information regarding
9957
       cigarettes and tobacco products from other states and sources concerning:
9958
              (4) (a) the presence of the following substances in detectable levels in a burned
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       state and, if the cigarette or tobacco product is typically burned when consumed, in a burned
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       state:
9961
              [(a)] (i) ammonia or ammonia compounds;
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              [(b)] (ii) arsenic;
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              [(c)] (iii) cadmium;
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              [<del>(d)</del>] (iv) formaldehyde; and
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              [(e)] (v) lead; and
9966
              (2) (b) a nicotine yield rating for the cigarette or tobacco product for which a rating
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       has been developed.
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              (2) Information obtained by the department under Subsection (1) is a public record
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       and may be disclosed in accordance with Section 63G-2-201 and disseminated generally by
9970
       the department.
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              [<del>26-57-103.</del>] 26B-7-505. Electronic cigarette products -- Labeling --
9973
       Requirements to sell -- Advertising -- Labeling of nicotine products containing
9974
       nicotine. .
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              (1) The department shall, in consultation with a local health department and with input
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       from members of the public, establish by rule made in accordance with Title 63G, Chapter 3.
9977
       Utah Administrative Rulemaking Act, the requirements to sell an electronic cigarette
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       substance that is not a manufacturer sealed electronic cigarette substance regarding:
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              (a) labeling;
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              (b) nicotine content;
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              (c) packaging; and
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              (d) product quality.
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- Working Draft -- For Discussion Purposes Only 9983 (2) On or before January 1, 2021, the department shall, in consultation with a local 9984 health department and with input from members of the public, establish by rule made in 9985 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements 9986 to sell a manufacturer sealed electronic cigarette product regarding: 9987 (a) labeling; 9988 (b) nicotine content; 9989 (c) packaging; and 9990 (d) product quality. 9991 (3) (a) A person may not sell an electronic cigarette substance unless the electronic 9992 cigarette substance complies with the requirements established by the department under 9993 Subsection (1). 9994 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic 9995 cigarette product unless the manufacturer sealed electronic cigarette product complies with 9996 the requirements established by the department under Subsection (2). 9997 (4) (a) A local health department may not enact a rule or regulation regarding 9998 electronic cigarette substance labeling, nicotine content, packaging, or product quality that is 9999 not identical to the requirements established by the department under Subsections (1) and 10000 (2).(b) Except as provided in Subsection (4)(c), a local health department may enact a 10001
- 10002 rule or regulation regarding electronic cigarette substance manufacturing.
 - (c) A local health department may not enact a rule or regulation regarding a manufacturer sealed electronic cigarette product.
- 10005 (5) A person may not advertise an electronic cigarette product as a tobacco cessation device. 10006
 - (6) Any nicotine product shall contain the statement described in Subsection (2) if the nicotine product:
- (a) (i) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal 10009 regulations; or 10010
- 10011 (ii) is not otherwise required under federal or state law to contain a nicotine warning; 10012 and
- 10013 (b) contains nicotine.

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(7) A statement shall appear on the exterior packaging of a nicotine product described 10014

10015	in Subsection (6) as follows:
10016	"This product contains nicotine."
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10018	[26-62-103.] <u>26B-7-506.</u> Regulation of tobacco retailers.
10019	The regulation of a tobacco retailer is an exercise of the police powers of the state,
10020	and through delegation, to other governmental entities.
10021	
10022	[26-62-201.] <u>26B-7-507.</u> Permitting requirement.
10023	(1) (a) A tobacco retailer shall hold a valid tobacco retail permit issued in accordance
10024	with this chapter by the local health department with jurisdiction over the physical location
10025	where the tobacco retailer operates.
10026	(b) A tobacco retailer without a valid permit may not:
10027	(i) place a tobacco product, an electronic cigarette product, or a nicotine product in
10028	public view;
10029	(ii) display any advertisement related to a tobacco product, an electronic cigarette
10030	product, or a nicotine product that promotes the sale, distribution, or use of those products;
10031	or
10032	(iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco, a
10033	tobacco product, an electronic cigarette product, or a nicotine product.
10034	(2) A local health department may issue a permit under this chapter for a tobacco
10035	retailer in the classification of:
10036	(a) a general tobacco retailer; or
10037	(b) a retail tobacco specialty business.
10038	(3) A permit under this chapter is:
10039	(a) valid only for one physical location, including a vending machine;
10040	(b) valid only at one fixed business address; and
10041	(c) if multiple tobacco retailers are at the same address, separately required for each
10042	tobacco retailer.
10043	
10044	[26-62-202.] <u>26B-7-508.</u> Permit application.
10045	(1) A local health department shall issue a permit under this chapter for a tobacco
10046	retailer if the local health department determines that the applicant:

10047 (a) accurately provided all information required under Subsection (3) and, if 10048 applicable, Subsection (4); and (b) meets all requirements for a permit under this chapter. 10049 10050 (2) An applicant for a permit shall: 10051 (a) submit an application described in Subsection (3) to the local health department 10052 with jurisdiction over the area where the tobacco retailer is located; and 10053 (b) pay all applicable fees described in Section 26-62-203. 10054 (3) The application for a permit shall include: 10055 (a) the name, address, and telephone number of each proprietor; 10056 (b) the name and mailing address of each proprietor authorized to receive permit-related communication and notices; 10057 10058 (c) the business name, address, and telephone number of the single, fixed location for which a permit is sought; 10059 10060 (d) evidence that the location for which a permit is sought has a valid tax commission 10061 license: 10062 (e) information regarding whether, in the past 24 months, any proprietor of the 10063 tobacco retailer has been determined to have violated, or has been a proprietor at a location 10064 that has been determined to have violated: 10065 (i) a provision of this chapter: (ii) Chapter 38, Utah Indoor Clean Air Act; 10066 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical 10067 10068 Solvents; (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act; 10069 (v) regulations restricting the sale and distribution of cigarettes and smokeless 10070 10071 tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or 10072 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine product; and 10073 (f) the dates of all violations disclosed under this Subsection (3). 10074 10075 (4) (a) In addition to the information described in Subsection (3), an applicant for a 10076 retail tobacco specialty business permit shall include evidence showing whether the business 10077 is located within:

(i) 1,000 feet of a community location;

10079 (ii) 600 feet of another retail tobacco specialty business; or

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- (iii) 600 feet of property used or zoned for agricultural or residential use.
- (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.
 - (5) The department or a local health department may not deny a permit to a retail tobacco specialty business under Subsection (4) if the retail tobacco specialty business meets the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7).
 - (6) (a) The department shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments in accordance with this chapter.
- 10091 (b) The permit process established by the department under Subsection (6)(a) may not require any information in an application that is not required by this section.

[26-62-203.] <u>26B-7-509.</u> Permit term and fees.

- 10095 (1) (a) The term of a permit issued under this chapter to a retail tobacco specialty business is one year.
- 10097 (b) The term of a permit issued under this chapter to a general tobacco retailer is two years.
 - (2) (a) A local health department may not issue a permit under this chapter until the applicant has paid a permit fee to the local health department of:
 - (i) \$30 for a new permit;
 - (ii) \$20 for a permit renewal; or
- 10103 (iii) \$30 for reinstatement of a permit that has been revoked, suspended, or allowed to expire.
 - (b) A local health department that collects fees under Subsection (2)(a) shall use the fees to administer the permit requirements under this chapter.
 - (c) In addition to the fee described in Subsection (2)(a), a local health department may establish and collect a fee to perform a plan review for a retail tobacco specialty business permit.
- 10110 (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before

10111	the day on which the permit expires.
10112	(4) A tobacco retailer that fails to renew a permit before the permit expires may apply
10113	to reinstate the permit by submitting to the local health department:
10114	(a) the information required in Subsection 26-62-202(3) and, if applicable, Subsection
10115	26-62-202(4);
10116	(b) the fee for the reinstatement of a permit; and
10117	(c) a signed affidavit affirming that the tobacco retailer has not violated the
10118	prohibitions in Subsection 26-62-201(1)(b) after the permit expired.
10119	
10120	[26-62-204.] <u>26B-7-510.</u> Permit nontransferable.
10121	(1) A permit is nontransferable.
10122	(2) If the information described in Subsection 26-62-202(3) changes, a tobacco
10123	retailer:
10124	(a) may not renew the permit; and
10125	(b) shall apply for a new permit no later than 15 days after the information in
10126	Subsection 26-62-202(3) changes.
10127	
10128	[26-62-205.] <u>26B-7-511.</u> Permit requirements for a retail tobacco specialty
10129	business.
10130	(1) A retail tobacco specialty business shall:
10131	(a) electronically verify proof of age for any individual that enters the premises of the
10132	business in accordance with Part 4, Proof of Age Requirements;
10133	(b) except as provided in Subsection 76-10-105.1(4), prohibit any individual from
10134	entering the business if the individual is under 21 years old; and
10135	(c) prominently display at the retail tobacco specialty business a sign on the public
10136	entrance of the business that communicates:
10137	(i) the prohibition on the presence of an individual under 21 years old in a retail
10138	tobacco specialty business in Subsection 76-10-105.1(4); and
10139	(ii) the prohibition on the sale of tobacco products and electronic cigarette products to
10140	an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1,
10141	76-10-105.1, and 76-10-114.
10142	(2) A retail tobacco specialty business may not:

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10143	(a) employ an individual under 21 years old to sell a tobacco product, an electronic
10144	cigarette product, or a nicotine product; or
10145	(b) permit an employee under 21 years old to sell a tobacco product, an electronic
10146	cigarette product, or a nicotine product.
10147	
10148	[26-62-206.] <u>26B-7-512.</u> Requirements for the sale of tobacco product,
10149	electronic cigarette product, or nicotine product.
10150	(1) A tobacco retailer shall:
10151	(a) provide the customer with an itemized receipt for each sale of a tobacco product,
10152	an electronic cigarette product, or a nicotine product that separately identifies:
10153	(i) the name of the tobacco product, the electronic cigarette product, or the nicotine
10154	product;
10155	(ii) the amount charged for each tobacco product, electronic cigarette product, or
10156	nicotine product; and
10157	(iii) the date and time of the sale; and
10158	(b) maintain an itemized transaction log for each sale of a tobacco product, an
10159	electronic cigarette product, or a nicotine product that separately identifies:
10160	(i) the name of the tobacco product, the electronic cigarette product, or the nicotine
10161	product;
10162	(ii) the amount charged for each tobacco product, electronic cigarette product, or
10163	nicotine product; and
10164	(iii) the date and time of the sale.
10165	(2) The itemized transaction log described in Subsection (1)(b) shall be:
10166	(a) maintained for at least one year after the date of each transaction in the itemized
10167	transaction log;
10168	(b) made available to an enforcing agency or a peace officer at the request of the
10169	enforcing agency or the peace officer; and
10170	(c) in addition to any documentation required under Section 59-1-1406 and
10171	Subsection 59-14-805(2).
10172	
10173	[26-62-207.] <u>26B-7-513.</u> Permit requirements for the sale of tobacco products
10174	and electronic cigarette products.

10175	(1) A tobacco retailer shall:
10176	(a) provide the customer with an itemized receipt for each sale of a tobacco product
10177	or an electronic cigarette product that separately identifies:
10178	(i) the name of the tobacco product or the electronic cigarette product;
10179	(ii) the amount charged for each tobacco product or electronic cigarette product; and
10180	(iii) the time and date of the sale; and
10181	(b) maintain an itemized transaction log for each sale of a tobacco product or an
10182	electronic cigarette product that separately identifies:
10183	(i) the name of the tobacco product or the electronic cigarette product;
10184	(ii) the amount charged for each tobacco product or electronic cigarette product; and
10185	(iii) the date and time of the sale.
10186	(2) The itemized transaction log described in Subsection (1)(b) shall be:
10187	(a) maintained for at least one year after the date of each transaction in the itemized
10188	transaction log; and
10189	(b) made available to an enforcing agency or a peace officer at the request of the
10190	enforcing agency or the peace officer that is no less restrictive than the provisions in this part.
10191	
10192	[26-62-301.] <u>26B-7-514.</u> Permit violation.
10193	A person is in violation of the permit issued under this chapter if the person violates:
10194	(1) a provision of this chapter;
10195	(2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
10196	(3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and
10197	Psychotoxic Chemical Solvents;
10198	(4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
10199	(5) a regulation restricting the sale and distribution of cigarettes and smokeless
10200	tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part
10201	1140; or
10202	(6) any other provision of state law or local ordinance regarding the sale, marketing,
10203	or distribution of a tobacco product, an electronic cigarette product, or a nicotine product.
10204	
10205	[26-62-302.] <u>26B-7-515.</u> Enforcement by state and local health departments.
10206	The department and local health departments shall enforce this chapter under the

10207	procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal
10208	adjudicative proceeding, including:
10209	(1) notifying a tobacco retailer of alleged violations of this chapter;
10210	(2) conducting hearings;
10211	(3) determining violations of this chapter; and
10212	(4) imposing civil administrative penalties.
10213	
10214	[26-62-303.] <u>26B-7-516.</u> Inspection of retail tobacco businesses.
10215	The department or a local health department may inspect a tobacco retailer to
10216	determine whether the tobacco retailer:
10217	(1) continues to meet the qualifications for the permit issued under this chapter;
10218	(2) if applicable, continues to meet the requirements for a retail tobacco specialty
10219	business license issued under Section 10-8-41.6 or Section 17-50-333;
10220	(3) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16,
10221	Pattern of Unlawful Activity Act;
10222	(4) violated any of the regulations restricting the sale and distribution of cigarettes and
10223	smokeless tobacco issued by the United States Food and Drug Administration under 21
10224	C.F.R. Part 1140; or
10225	(5) has violated any other provision of state law or local ordinance.
10226	
10227	[26-62-304.] <u>26B-7-517.</u> Hearing Evidence of criminal conviction.
10228	(1) At a civil hearing conducted under Section 26-62-302, evidence of the final
10229	criminal conviction of a tobacco retailer for violation of Section 76-10-114 at the same
10230	location and within the same time period as the location and time period alleged in the civil
10231	hearing for violation of this chapter for sale of a tobacco product, an electronic cigarette
10232	product, or a nicotine product to an individual under 21 years old is prima facie evidence of a
10233	violation of this chapter.
10234	(2) If the tobacco retailer is convicted of violating Section 76-10-114, the enforcing
10235	agency:
10236	(a) shall assess an additional monetary penalty under this chapter for the same

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offense for which the conviction was obtained; and

(b) shall revoke or suspend a permit in accordance with Section 26-62-305.

10239	[26-62-305.] <u>26B-7-518.</u> Penalties.
10240	(1) (a) If an enforcing agency determines that a person has violated the terms of a
10241	permit issued under this chapter, the enforcing agency may impose the penalties described
10242	in this section.
10243	(b) If multiple violations are found in a single inspection by an enforcing agency or a
10244	single investigation by a law enforcement agency under Section 77-39-101, the enforcing
10245	agency shall treat the multiple violations as one single violation under Subsections (2), (3),
10246	and (4).
10247	(2) Except as provided in Subsections (3) and (4), if a violation is found in an
10248	investigation by a law enforcement agency under Section 77-39-101 or an inspection by an
10249	enforcing agency, the enforcing agency shall:
10250	(a) on a first violation at a retail location, impose a penalty of \$1,000;
10251	(b) on a second violation at the same retail location that occurs within one year of a
10252	previous violation, impose a penalty of \$1,500;
10253	(c) on a third violation at the same retail location that occurs within two years after two
10254	previous violations, impose:
10255	(i) a suspension of the permit for 30 consecutive business days within 60 days after
10256	the day on which the third violation occurs; or
10257	(ii) a penalty of \$2,000; and
10258	(d) on a fourth or subsequent violation within two years of three previous violations:
10259	(i) impose a penalty of \$2,000;

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- (ii) revoke a permit of the retailer; and
- (iii) if applicable, recommend to a municipality or county that a retail tobacco specialty business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.
- (3) If a violation is found in an investigation of a general tobacco retailer by a law enforcement agency under Section 77-39-101 for the sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual under 21 years old and the violation is committed by the owner of the general tobacco retailer, the enforcing agency shall:
 - (a) on a first violation, impose a fine of \$2,000 on the general tobacco retailer; and
- 10268 (b) on the second violation for the same general tobacco retailer within one year of 10269 the first violation:
 - (i) impose a fine of \$5,000; and

- 10271 (ii) revoke the permit for the general tobacco retailer. 10272 (4) If a violation is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101 for the sale of a tobacco product, an 10273 10274 electronic cigarette product, or a nicotine product to an individual under 21 years old, the enforcing agency shall: 10275 10276 (a) on the first violation: 10277 (i) impose a fine of \$5,000; and (ii) immediately suspend the permit for 30 consecutive days; and 10278 10279 (b) on the second violation at the same retail location within two years of the first 10280 violation: (i) impose a fine of \$10,000; and 10281 10282 (ii) revoke the permit for the retail tobacco specialty business. (5) (a) Except when a transfer described in Subsection (6) occurs, a local health 10283 10284 department may not issue a permit to: 10285 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2) 10286 or (3); or 10287 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner, 10288 or other holder of significant interest as another tobacco retailer for whom a permit is suspended or revoked under Subsection (2), (3), or (4). 10289 10290 (b) A person whose permit: (i) is suspended under this section may not apply for a new permit for any other 10291 10292 tobacco retailer for a period of 12 months after the day on which an enforcing agency 10293 suspends the permit; and (ii) is revoked under this section may not apply for a new permit for any tobacco 10294 10295 retailer for a period of 24 months after the day on which an enforcing agency revokes the 10296 permit. 10297 (6) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a tobacco retailer location shall stay on the record for that tobacco retailer location unless: 10298 10299 (a) the tobacco retailer is transferred to a new proprietor; and 10300 (b) the new proprietor provides documentation to the local health department that the
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new proprietor is acquiring the tobacco retailer in an arm's length transaction from the

previous proprietor.

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10303	[26-62-306.] <u>26B-7-519.</u> Recognition of tobacco retailer training program.
10304	(1) In determining the amount of the monetary penalty to be imposed for a violation of
10305	this chapter, a hearing officer shall reduce the civil penalty by at least 50% if the hearing
10306	officer determines that:
10307	(a) the tobacco retailer has implemented a documented employee training program;
10308	and
10309	(b) the employees have completed that training program within 30 days after the day
10310	on which each employee commences the duties of selling a tobacco product, an electronic
10311	cigarette product, or a nicotine product.
10312	(2) (a) For the first offense at a location, if the hearing officer determines under
10313	Subsection (1) that the tobacco retailer has not implemented a documented training program
10314	with a written curriculum for employees at that location regarding compliance with this
10315	chapter, the hearing officer may suspend all or a portion of the penalty if:
10316	(i) the tobacco retailer agrees to initiate a training program for employees at that
10317	location; and
10318	(ii) the training program begins within 30 days after the hearing officer makes a
10319	determination under this Subsection (2)(a).
10320	(b) If the hearing officer determines at a subsequent hearing that the tobacco retailer
10321	has not implemented the training program within the time period required under Subsection
10322	(2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless
10323	the tobacco retailer demonstrates good cause for an extension of time for implementation of
10324	the training program.
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10326	[26-62-307.] <u>26B-7-520.</u> Allocation of civil penalties.
10327	Civil monetary penalties collected under this chapter shall be allocated as follows:
10328	(1) if a local health department conducts an adjudicative proceeding under Section
10329	26-62-302, the penalty shall be paid to the treasurer of the county in which the violation was
10330	committed, and transferred to the local health department; and
10331	(2) if the department conducts a civil hearing under Section 26-62-302, the penalty
10332	shall be deposited in the state's General Fund, and may be appropriated by the Legislature

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to the department for use in enforcement of this chapter.

10335	[26-62-401.] <u>26B-7-521.</u> Verification of proof of age.
10336	(1) As used in this section:
10337	(a) "Employee" means an employee of a retail tobacco specialty business.
10338	(b) "Electronic verification program" means a technology used by a retail tobacco
10339	specialty business to confirm proof of age for an individual.
10340	(2) A retail tobacco specialty business shall require that an employee verify proof of
10341	age as provided in this section.
10342	(3) To comply with Subsection (2), an employee shall:
10343	(a) request the individual present proof of age; and
10344	(b) verify the validity of the proof of age electronically in accordance with Subsection
10345	(4).
10346	(4) A retail tobacco specialty business shall use an electronic verification program to
10347	assist the business in complying with the requirements of this section.
10348	(5) (a) A retail tobacco specialty business may not disclose information obtained
10349	under this section except as provided under this part.
10350	(b) Information obtained under this section:
10351	(i) shall be kept for at least 180 days; and
10352	(ii) is subject to inspection upon request by a peace officer or the representative of ar
10353	enforcing agency.
10354	(6) (a) If an employee does not verify proof of age under this section, the employee
10355	may not permit an individual to:
10356	(i) except as provided in Subsection (6)(b), enter a retail tobacco specialty business;
10357	or
10358	(ii) purchase a tobacco product or an electronic cigarette product.
10359	(b) In accordance with Subsection 76-10-105.1(4), an individual who is under 21
10360	years old may be permitted to enter a retail tobacco specialty business if the individual is:
10361	(i) accompanied by a parent or legal guardian who provides proof of age; or
10362	(ii) (A) present at the retail tobacco specialty business solely for the purpose of
10363	providing a commercial service to the retail tobacco specialty business, including making a
10364	commercial delivery;
10365	(B) monitored by the proprietor of the retail tobacco specialty business or an

employee of the retail tobacco specialty business; and

10367	(C) not permitted to make any purchase or conduct any commercial transaction other
10368	than the service described in Subsection (6)(b)(ii)(A).
10369	(7) To determine whether the individual described in Subsection (2) is 21 years old or
10370	older, the following may request an individual described in Subsection (2) to present proof of
10371	age:
10372	(a) an employee;
10373	(b) a peace officer; or
10374	(c) a representative of an enforcing agency.